

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.Nos.31816 and 31817 of 2017

W.M.P.Nos.34961 and 34962 of 2017

Indian Overseas Bank,
Perungulathur Branch,
Chennai-63.

Rep.by its Assistant Manager

... Petitioner in both W.Ps.

vs.

1. M/s.Global Powertech Equipment Pvt. Ltd.,
Regd. Office at Sigappi Achi Building,
IV Floor, Door No.18/3,
Rukmani Lakshmipathi Road,
Egmore, Chennai 600 008.
Rep.by its Managing Director

2. M/s.Orient Green Power Company Ltd.,
Sigappi Achi Building,
IV Floor, Door No.18/3,
Rukmani Lakshmipathi Road (Marshall Road),
Egmore, Chennai 600 008.
Rep.by its Managing Director

3. V.Kannan,
S/o.P.Venkataraman,
No.24/120, Padmanaba Nagar,
Vth Street, Adyar, Chennai-20.

4. Vathsala Ranganathan,
W/o.A.R.Ranganathan,
No.15, Sarangapani Street,
T.Nagar, Chennai-17.

5. R.Ramesh,
S/o.P.R.Ravindran Nair,
No.113, 5th Street,
Padmanaba Nagar,
Chennai 600 020.

... Respondents in

both WPs.

W.P.No.31816 of 2017: Petition filed under Article 226 of the
Constitution of India, praying for the issuance of a writ of
certiorari and Mandamus, to quash the impugned order, dated

28.06.2017, made in M.A.No.45 of 2017 in M.A.No.7 of 2017 in O.A.SR.No.3131 of 2016, on the file of the Debts Recovery Tribunal-III, at Chennai and allow the same and consequently, direct the said Tribunal to number the said application, hear and dispose of the same, on merits.

W.P.No.31817 of 2017: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 23.02.2017, made in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016, on the file of the Debts Recovery Tribunal-III, at Chennai and allow the same and consequently, direct the said Tribunal to number the said application, hear and dispose of the same, on merits.

For Petitioner : Mr.F.B.Benjamin George

COMMON ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Being aggrieved by the order made in M.A.No.45 of 2017 in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016, dated 28.06.2017, on the file of the Debts Recovery Tribunal-III, Chennai, dismissing M.A.No.45 of 2017, filed to restore M.A.No.7 of 2017, which was dismissed for default on 23.02.2017, the Assistant Manager, Indian Overseas Bank, Perungulathur Branch, Chennai-63, has filed the instant writ appeals.

2. Material on record discloses that M/s.Global Powertech Equipment Pvt. Ltd., Chennai, 1st respondent herein, has borrowed the term loan of Rs.25,45,00,000/-, Cash Credit Limit of Rs.4,25,00,000/-, Additional Term Loan of Rs.2.83 Crores and Letter of Credit Limit of Rs.2.44 Crores to the Indian Overseas Bank, Chennai, petitioner herein. M/s.Orient Green Power Company Ltd., Chennai, 2nd respondent herein, stood as a corporate guarantor. Respondents 3 to 5 have stood as personal guarantors. There was default in monthly instalments. Account was closed as NPA. As on 13.04.2016, a sum of Rs.24,07,12,521/- was due.

3. On 13.04.2016, the Indian Overseas Bank, Perungulathur Branch, Chennai-63, petitioner herein, has filed an application, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (In short "RDBI Act"), in O.A.Sr.No.3131 of 2016, on the file of the Debt Recovery Tribunal-III, Chennai. O.A.Sr.No.3131 of 2016, was returned on 04.05.2016, by the Debt Recovery Tribunal-III, Chennai, with the following defects,

"Pagination in the Index and Typed set of papers not done. After compliance, further scrutiny will be done".

Three weeks' time was granted for compliance. Thereafter, defects were rectified and papers were represented on 08.12.2016, with a petition to condone the delay of 198 days

in representation. Representation petition was numbered as M.A.No.7 of 2017, which came to be listed for hearing on 23.02.2017. The Bank did not represent the matter and hence, the Debt Recovery Tribunal-III, Chennai, has dismissed M.A.No.7 of 2017, on 23.02.2017, as hereunder:

"M.A.No.07/17 is filed by the petitioner/applicant bank to condone delay of 198 days in re-presenting the OA.

No representation on behalf of the petitioner/application bank, even after passing over and during second round of call work.

MA stands dismissed for default and non-prosecution, however without costs."

4. Contending inter alia that the cause list could not be verified through website, which was not functioning after 27.01.2017 and that absence on the abovesaid date, was neither wilful nor wanton, M.A.No.45 of 2017 has been filed to restore M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016.

5. Indian Overseas Bank, Chennai, in the supporting affidavit, has submitted that though on 22.05.2017 and 05.06.2017, Mr.M.Shiva Sudhaakar, junior advocate and one of the counsel on record, appeared for the Bank and prayed to condone the delay. DRT-III, Chennai, did not entertain his appearance and adjourned the matter and therefore, the Bank was constrained to file a memo, dated 13.06.2017, engaging Mr.Ashok Rajaraaman, Advocate, with 34 years' experience, at the bar.

6. Mr.F.Benjamin George, learned counsel for the petitioner submitted that excluding three weeks' time granted for compliance of the defects noticed, number of days delay in representation, was computed. Whereas, the Registry of Debts Recovery Tribunal, calculated the delay, from the date of return. Therefore, when the matter came up on 13.06.2017, DRT-III, Chennai, has directed the Registry to post the matter on 28.06.2017, for filing appropriate affidavit by the petitioner-bank, to forgo the interest, for the period of delay and to correct number of days of delay.

7. On 23.06.2017, about 3.00 P.M., the Bank's Advocate, Mr.Ashok Rajaraaman, visited the Registry of the Tribunal, to verify the records, but no officer was available. Thereafter, on 27.06.2017, another officer informed the counsel that the cause list for the next day has been finalized and therefore, the counsel could not verify the records.

8. On 28.06.2017, an affidavit, with the number of days of delay, as pointed out by the Tribunal, was not filed and hence, DRT-III, Chennai, has dismissed M.A.No.45 of 2017, filed to restore M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016.

It is against the said order, Indian Overseas Bank, Chennai, has filed the instant writ petition, for the reliefs, stated

supra.

9. On the basis of the above facts, Mr.F.Benjamin George, learned counsel for the petitioner made submissions.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. M.A.No.45 of 2017 has been filed to restore M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016. Miscellaneous Application No.7 of 2017, has been filed to condone the delay of 198 days in representation. Condoning delay in representation is a matter between the Court and the litigant, and there is no need to issue any notice in every case, except in cases, where there is a possibility of the party respondent in such application, creating any third party interest, in the subject property, involved in the lis.

(i) In Mahant Bikram Dass Chela Vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others, reported in (1977) 4 SCC 69, a writ petition was dismissed by the Single Judge and an appeal was filed under Clause 10 of the Letters Patent to a Division Bench. Only one set of documents was filed along with the memorandum of the Letters Patent appeal. Nevertheless, the Deputy Registrar received the appeal and accepted the remaining two sets of the documents required to be filed at a later date but within 40 days. When the matter was placed before the Hon'ble Division Bench for hearing, the respondents raised an objection that the appeal was barred by limitation on the ground that though the memorandum of appeal was filed within 30 days, it was not accompanied by three sets of documents within that time. The appellant thereupon asked for adjournment for filing an application under Section 5 of the Limitation Act for condonation of the delay. The Hon'ble Division Bench held that though the appellant had filed the application, the appellant had failed to make out a case for condonation of the delay and, therefore, dismissed the appeal, as barred by limitation. After considering Article 117 of the Limitation Act, 36 of 1963, Rules and orders of the Punjab and Haryana High Court, in particular, Rule 5(1), Chapter 2-C, part (c), which deals with preparation of the paper books in Letter Patent Appeals in State of Punjab Vs. Shamlal Murari, reported in (1976) 1 SCC 716 at paragraph Nos.10 to 23, the Hon'ble Apex Court in Mahant Bikram Dass Chela's case held as follows:

"10. Article 117 of the Limitation Act, 36 of 1963, prescribes a period of. 30 days' limitation for filing an appeal from a decree or order of any High Court to the same Court. The time for filing such an appeal runs from the date of the decree or order appealed from. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the appellant satisfies the court that he had sufficient cause for not preferring the

appeal within that period.

11. Order 41, Rule 1(1) of the, Code of Civil Procedure requires that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in that behalf. The memorandum has to be accompanied by a copy of the decree appealed from and of the judgment on which it is founded, unless the appellate court dispensers with the production of the judgment. If these conditions are fulfilled the appeal is preferred validly, so far as the requirements of the Civil Procedure Code are concerned, on the date on which it is presented. A memorandum which does not satisfy these requirements may, under Rule 3 (1), be rejected, or returned to the appellant, for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

12. The Rules and Orders of the Punjab and Haryana High Court, which are contained in Volume V of the High Court publication, relate to "Proceedings in the High Court" and are made under the authority, inter alia, of the Letters Patent of the High Court. Chapter of the aforesaid volume, which is entitled "Judicial Business", deals by Part A with the presentation and reception of appeals, petitions and applications for Review and Revision. Rule 4 provides :

"No memorandum of appeal preferred under clause 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation".

By rule 5(1), the Deputy Registrar may return for amendment and refiling within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be fixed by him, any memorandum of appeal for the reason specified in Order XII, Rule 3, Civil Procedure Code. If the memorandum of appeal is not amended within the time allowed by the Deputy Registrar under sub-rule (1), it has to be listed for orders before the Court under sub-r. (2).

13. Chapter 2-C, Part C, which deals with "Preparation of paper books in Letters Patent Appeals", provided by rule 3 that no appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of (a) the memorandum of appeal; (b) the judgment appealed from; and (c) the paper-book which was before the Judge- from whose judgment the appeal is preferred.

14. In the instant case, only one set of documents was filed along with the Memorandum of

the Letters Patent Appeal. Nevertheless, the Deputy Registrar did receive the appeal on Dec. 23, 1970. He accepted the remaining two sets of the documents required to be filed under rule,3 on January 30, 1971.

15. The judgment of the Full Bench, Bikram Dass Dass v. Financial Commissioner, (1) in pursuance of which the Division Bench considered the question of condonation of delay and passed the impugned order came for consideration before this Court in State of Punjab v. Shamlal Murari. [(1976) 1 SCC 719] It was held in that case that every minor detail specified in rule 3 does not carry a compulsory import, that the core of the matter is not that three copies of documents mentioned in the rule must be filed but that copies of all the documents mentioned in the rule should be before the Court and that there should be no overemphasis on the filing of three copies of the documents at the time when the appeal is filed. The Court further observed that if no copy at all of any of the three items is furnished the result might be different but the failure to comply with the rule strictly is a mere irregularity which the Court, in the exercise of its discretion, can condone by granting further time for formal compliance with the rule. After thus holding that rule 3, though expressed in mandatory language, is directory in nature, the Court did not interfere with the order of the High Court refusing to extend the time and condone the delay, since that was a discretionary exercise of power by the High Court.

16. Following this decision, and in respectful agreement with the view that rule 3 is directory and not mandatory, we must hold that since one complete set of the three documents specified in rule 3 was filed along with the memorandum, the failure to file two additional sets of documents is a mere irregularity which it was within the discretion of the High Court to condone.

17. Counsel for the respondents contends that since the High Court has exercised its discretion in the matter by refusing to condone the delay, we should not interfere with the High Court's order for the same reasons for which this Court in Shamlals (supra) case refused to interfere with discretionary order. We are unable to accept that the decision in Shamlal's case can be a precedent on the question as to the limits of the power of this Court to interfere with a discretionary order. But quite apart from that consideration, there are valid reasons why we cannot sustain the order of the High Court refusing to condone, what is described as 'the delay caused in filing the

Letters Patent Appeal.

18. The argument proceeds on the assumption that the appeal was presented beyond the period of limitation prescribed for filing Letters Patent Appeals. That is a fallacious assumption. The appeal was presented within 10 days, which is the period of limitation for filing Letters Patent Appeals. There was, however, an irregularity in presenting the appeal, namely, that the appeal was accompanied by only one set of the three items mentioned in rule 3 of Chapter 2- C which requires that three sets should be filed. Ride 3, being directory in nature, substantial compliance therewith is enough to meet its requirements. There was, in the instant case, substantial compliance with the rule and therefore, it was erroneous to treat the appeal as being barred by limitation.

19. The irregularity committed in filing only one set of the three documents mentioned in rule, 3 of Chapter 2-C was cured within a reasonable time by filing the remaining two sets on January 30, 1971. That was within 40 days of the date on which the appeal was preferred, which is the time which the Deputy Registrar can grant in the aggregate, under rule 5(1) of Chapter 1, for amendment of a memorandum of appeal which does not comply with Order 41, rule, 3, C.P.C. The Letters Patent Appeal was taken up by the Admitting Bench for admission on February 24, 1971 when the appeal was complete in all respects. There was then no question of granting further time for "presentation" of the appeal or for removing the irregularity from which the presentation of the appeal suffered.

20. The objection raised by the respondents on the score of limitation, the adjournment sought by the appellant to file an application under s. 5 of the Limitation Act for condonation of delay and the refusal of the Division Bench to condone the delay are all misplaced, proceeding as they did on an erroneous assumption that the appeal was barred by time on the date on which it was filed and that the re- quirement of rule 3 of Chapter 2-C is mandatory in character. We cannot stay our hands on the ground that this Court does not normally interfere with discretionary orders, when the High Court used its discretion on an altogether fallacious supposition that it had to consider the question of condonation of delay in the context of an application filed under s. 5 of the Limitation Act.

21. Section 5 of the Limitation Act is a hard task-matter and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around s. 5, its highlights being that one ought not easily to take away a

right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of S. 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of s. 5, Limitation Act, or of rule 4, Chapter 1, of the High Court Rules. If the Division Bench were, aware that rule, 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned.

22. We hold accordingly that the High Court is wrong in its view that the appeal was barred by time. The memorandum was presented within the prescribed period of limitation of 30 days and there is no reason why, the irregularity committed in not filing three sets of documents along with the memorandum should not be excused when one complete set was filled with the memorandum and the remaining two sets were filed within a reasonable, time thereafter."

(ii) In *Indian Statistical Institute v. M/s. Associated Builders and Others*, reported in (1978) 1 SCC 483, at paragraph Nos.10 to 13, held as follows:

"10.... When there is no delay in presenting the objection petition section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under section 5 of the Limitation Act. The application filed before the High Court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure, Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be re-presented.

11. In a recent judgment of this Court delivered on August 3, 1977 in *Mahant Bikram Dass v. Financial Commissioner and Ors.*, [(1977) 4 SCC 69] it is pointed out that the petition under section 5 of the Limitation Act seeking to condone the delay in preferring an appeal is different from a petition for excusing the delay in re-presentation.

12 Even in cases where there has been delay in filing of an appeal or objection petition within the time prescribed when the delay is not due to want of bona fides by the petitioner and is due to the party having acted in a particular manner on the wrong advice given by his legal adviser, he cannot be held guilty of negligence so as to disentitle him to plead sufficient cause under section 5 of the Limitation Act. (State of West Bengal v. Administrator, Howrah Municipality & Ors. [(1972) 1 SCC 366].

13. Equally when the petition is not properly stamped the Court has ample powers to extend the time for affixing proper court-fee. Section 149 of the Code of Civil Procedure confers ample power on the High Court to exercise its powers in order to do justice to a litigant where the failure is not due to any fault of the litigant. (Mahant Ram Das v. Ganga Das [AIR 1961 SC 882]."

(iii) In *Bhuvaneswari v. R. Elumalai*, reported in 2002 (3) CTC 22, this Court considered, as to whether an order of the Court returning the papers, for compliance of certain defects, is an administrative order or judicial order and at Paragraph No.14, held as follows:

"14. The time granted by the court for the representation of the plaint, is only an administrative order and not a judicial order, and as such, if there is any delay in the representation of the plaint, an application to excuse the said delay could be filed under Section 151 CPC and it need not necessarily be the one under Section 148 CPC. In fact, Section 151CPC is an omnibus provision available in the code to make suitable orders, which are necessary to meet the ends of justice and therefore, the application, which was filed under Section 151 CPC could have been allowed by the trial court. Even otherwise, the substance of the petition is more important than the form. Mere quoting of the provision wrongly, is not fatal to the petition itself. In that view of the matter also, the trial court could have allowed the said petition in excusing the delay in representation of the plaint. But, however, the court had taken a rigid view that the petitioner ought to have filed the petition either under section 148 CPC or under Section 149 CPC and dismissed the petition. The said view of the trial court is an erroneous one and liable to be set aside. In fact, in this case, the plaint itself has not been admitted and the trial has not been commenced and it would not prejudice the case of the defendant to any extent, and that is also yet another reason, in favour of the petitioner to

allow the petition. The defendant has got enough time to put forward his defence in the suit and his right to defend the case would not at all be prejudiced."

(iv) After considering the decisions in Y.Kusbur v. Subbarayan, reported in 1993 TLNJ 375, General Manager, HVF, Avadi v. D.Shadak Khalilur, Khalilur Rahman v. Rajagopal Gounder, reported in 1983 TLNJ 37 and Anantng Vs. Katiji, reported in AIR 1987 SC 1353, this Court in R.S.Munirajan v. Jaya Theatre, Thanjavur Road, Kumbakonam & 5 Others, reported in 1995 (1) CTC 587, at paragraph Nos.9 to 13 and 15, held as follows:

"9. Before the plaint is numbered whatever happens in the numbering of the plaint is a matter between the plaintiff and the court. The defendants would come into picture only after the plaint is numbered and suit summons are served upon them. In the present case the plaint was returned to the plaintiff for carrying out certain rectification of defects, before it was numbered. The plaint was represented with a delay of 102 days. The reason for the delay, according to the plaintiff, is that the plaint and other connected records were got mixed-up with other case bundles and the same could not be traced in time. In order to explain the delay the advocate clerk of the plaintiff has been examined and in his deposition he has explained the reason for the delay. He also filed an affidavit stating the reasons for the delay in representation of the plaint.

10. The question of condonation of delay in representation came up for consideration before a Division Bench of this Court in Y. Kusbar v. Subbarayan (1993 TLNJ 375). According to the facts arising in that case there was a delay of 191 days in representing the papers. While considering this aspect, the Division Bench held as under:-

"This is not a case where the appeal has been filed out of time. This is a case in which the appeal is filed in time. Therefore it can't be said that the decree under appeal has assumed finality and the right has been accrued to the respondents. The delay in representation of the papers in the instant case cannot be put to the account of the party. Several times it happens due to the mistake on the part of the advocate's clerk or the advocates in presenting the appeal. Therefore, the court has to take care to see that the justice does not suffer in such cases. If there is any under delay in representation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed in time, but there is delay in representation of the

papers returned for rectification of the defects by the appellate court, the delay can be condoned on taking a lenient view by compensating the other side on payment of costs".

11. A similar question came up for consideration before this Court in the case of General Manager, HVF, Avadi v. D. Shadhak(), wherein this Court held as under:-

"There is a clear distinction between the delay in representation of a proceeding and the delay in representation of the papers with reference thereto. In view of the basic difference between the two, the consideration relevant to the former will not apply to the latter and an application for excusing the delay in representing the papers in any proceeding whether it be a suit, a civil revision petition, a first appeal or a second appeal in any court, notice to the respondent in the main case is not necessary and even if such notice is given to the respondent and he is heard and overruling his objection, the delay is condoned, he cannot be said to have been aggrieved in the sense that there being a judicial determination against him so as to entitle him to approach the High Court under Section 115 of C.P.C." In the above said decision, it was further held "that in this context the difference between the condonation of delay in the proper presentation of a particular proceedings pursuant to Section 5 of the Limitation Act and the condonation of delay in representation of a particular proceeding obviously under Section 151 C.P.C. has to be noticed. In the former case there is a specific provision in the statute, viz. the Limitation Act, which imposes an obligation on the court itself suo motu to reject a proceeding if it is barred by limitation. The decision is not available or applicable to case of delay in the representation of papers in question. Consequently, the provision and consideration applicable to excusing the delay under Section 5 of the Limitation Act will not apply to the question of excusing the delay in representing the papers."

12. Similarly, in Khalilur Rahman v. Rajagopal Gounder and Ors. (1983 TLNJ 37), this Court, while considering the delay in representation the plaintiff held that, "there was a delay on the part of the plaintiffs to represent the plaintiff, which was returned by the Court for some compliance. When representing the plaintiff after delay, the plaintiffs filed an affidavit explaining the reasons therefor. The Court was satisfied with the plaintiffs explanation and accepted the plaintiff on representation after excusing the delay. This civil

revision petition has been brought by parties who are named as defendants in the plaint. The Suit has not yet been numbered. Because the plaintiffs committed an indiscretion in giving notice to them of their application for excusing the delay was considered by the Court below after notice to the parties who figured as defendants, naturally those individuals had the opportunity of making their representation against the plaint being represented after delay. The fact that the Court below had gone into their objections itself might be regarded as a good ground for dismissing the present civil revision petition filed by those parties, for that shows that the Court did not shut them out. But I wish to affirm the order of the lower court on a broader principle, a principle which goes counter to the procedure adopted by the court in this Case". It was further held that, "the parties proposed to be added as defendants to the suit, in my judgment, do not have any locus-standi to figure in the preliminaries before the suit gets numbered and suit summons goes to them. Admission of the plaint is the court's job. The condonation of the delay in representation of the plaint is strictly a matter between the court, on the one hand, and the suit or, who has filed the proceeding on the other. At that stage and for those limited purposes persons who are proposed as the opposite parties in the plaint really have no locus standi. They cannot have any say in the matter of delay or its condonation".

13. In *Collector, Land Acquisition, Anantnag v. Katiji* the Supreme Court while considering the provisions of Section 5 of the Limitation Act held that, "the legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being defeated. As against his

when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other said cannot claim to have vested right in justice being done because of a no-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

15. In the present case, there was a delay of 102 days in representing the plaint. The delay occurred the plaint and other papers were got mixed up with other case bundles and the same could not be traced and represented in time. The advocate clerk of the plaintiff filed in affidavit setting out the reason for the delay and he also deposed the same in his oral evidence. Thus, considering the facts arising in this case in the light of the judicial pronouncements cited supra and in the interest of justice, I hold that the delay of 102 days in representing the plaint can be excused since the plaintiff has made out a case of condoning the delay in representation. Accordingly, the delay of 102 days in representing the plaint is condoned. The trial is directed to number the plaint if it is otherwise in order."

(v) After considering the decision in Saravanan, S. v. The Chief Judge Court of Small Causes, reported in 2000 III CTC 1, in Kannammal And Another v. Subatra reported in 2000 (4) CTC 161, at paragraph Nos.4 and 5, this Court, held as follows:

"4. As already stated, the petitioners herein have filed the application for restoration of the appeal without any delay and the delay is only in representing the matter. As there is a delay in representation, as held by this Court in the judgment in the case of Saravanan, S. v. The Chief Judge Court of Small Causes, , this Court need not be very strict in condoning the delay. But at the

same time, this Court has to take into consideration the conduct of the parties in filing the papers defectively and after return, failing to represent the same within the stipulated time ultimately, by this procedure, the matters are being unduly delayed, which may end in the benefit of one and for the inconvenience of the other. Hence, the party, who suffers by such conduct of the other should be compensated.

5. Hence, following the said principle laid down by this Court in the above referred judgment, I condone the delay in representation and set aside the order of the lower Court on condition that the petitioners shall pay a sum of Rs.1,500 (Rupees one thousand and five hundred only) within two weeks to the respondent in this revision petition, failing which, the petition for condoning the delay in representation shall stand dismissed automatically. The lower Court is directed to restore the appeal on file and dispose of the same within two months. Neither of the parties are entitled to prolong the matter on any ground. The final decree-proceedings can be proceeded with and the passing of final decree alone is stayed till the disposal of the appeal."

11. Rules do not contemplate notice, to the respondent, in the petition filed for condoning the delay in representation of the papers, returned by the registry, for complying with certain defects noticed. It is a matter between the Court and the applicant/petitioner. But the Court/Tribunal can consider issuance of notice to the respondent, depending upon the length of delay in representation, conduct of the party, seeking condonation, and the likelihood of rights accrued to a third party, if any, pending lis. But, it is purely the discretion of the Court, depending upon the subject matter of dispute, and the prejudice likely to be caused to a third party, in condoning the delay in representation.

12. In the case on hand, Indian Overseas Bank, Perungulathur Branch, Chennai, has filed O.A.Sr.No.3131 of 2016, against M/s.Global Powertech Equipment (P), Chennai and others, for recovery of Rs.24,07,12,521/-, before the Debts Recovery Tribunal-III, Chennai.

13. Original Application filed on 13.04.2016, has been returned on 04.05.2016, with certain defects, as stated supra. Defects have been rectified and on 08.12.2016, O.A.Sr.No.3131 of 2016, has been represented, with a petition in M.A.No.7 of 2017, to condone the delay of 198 days, in representation. The said application, M.A.No.7 of 2017, has been listed for hearing on 23.02.2017. On the said date, there was no representation. Hence, DRT-III, Chennai, has passed the

following order,

"M.A.No.07/17 is filed by the petitioner / applicant bank to condone delay of 198 days in re-presenting the OA.

No representation on behalf of the petitioner / applicant bank, even after passing over and during second round of call work.

MA stands dismissed for default and non-prosecution, however without costs."

14. Subsequently, explaining the cause for non-appearance, which resulted in dismissal of M.A.No.7 of 2017, M.A.No.45 of 2017, has been filed to restore the application in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016.

15. Reading of the Certified copy of the record of proceedings of DRT-III, Chennai, in M.A.No.45 of 2017 in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016, shows that when M.A.No.45 of 2017, was listed on 22.05.2017 and 05.06.2017 respectively, a junior counsel representing the counsel on record was present and he has prayed for time for enquiry in M.A.No.45 of 2017. On 13.06.2017, the bank has filed a memo, which reads thus,

"The above original application has been filed by the applicant through one of its panel advocates and authorised him to engage any other advocate to present the case. On 05.06.2017, when the above applications came before this Hon'ble Tribunal, Sri.Ashok Rajaraman, a senior advocate of the bar having more than 34 years' experience was authorised by the counsel for the applicant to represent the case and a memo to that effect was presented before this Hon'ble Tribunal. However, in the absence of the signature of the applicant herein, this Hon'ble Tribunal did not entertain the said memo. Therefore, this memo with the signature of the applicant herein is being filed. The applicant also executes a joint vakalath in favour of the aforesaid Mr.Ashok Rajaraman to enable him to handle the case in the absence of the penal advocate, Sri.F.B.Benjamin George."

16. On 13.06.2017, the DRT-III, Chennai, has passed the following order:

"Mr.Ashok Rajaraaman, Advocate filed additional Vakalat on behalf of the petitioner bank along with a memo. M.A.No.45 of 2017 is filed by the petitioner bank to restore M.A.No.07/17 which was dismissed for default on 23.02.2016. Heard. Call on 28.06.2017 for filing appropriate affidavit with regard to foregoing of interest by the applicant bank and also with regard to correct number of days delay."

17. In M.A.No.7 of 2017, Registry of the Tribunal has already accepted the number of days of delay, computed by the Bank. If for any reason, the Tribunal was of the view that such calculation was erroneous, the Tribunal should have directed the Registry to strike off the number assigned to the Miscellaneous Petition No.7 of 2017, filed to condone the delay in representation, and sent the matter back to the Registry.

18. When the Registry of the Tribunal, had already calculated the number of days of delay in representation, and assigned M.A.No.7 of 2017, for condoning the delay in representing O.A.Sr.No.3131 of 2016, the Tribunal appears to have insisted for filing an affidavit with correct number of days of delay in M.A.No.7 of 2017, which has been already dismissed for default. When M.A.No.45 of 2017 in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016, came up for hearing on 28.06.2017, the Debts Recovery Tribunal-III, Chennai, has dismissed M.A.No.45 of 2017, for default and non-prosecution, as follows:

"Ld. counsel for the petitioner/applicant bank is present. M.A.No.45/17 is taken up. This is an application filed by the petitioner bank to restore the M.A.No.07/17 which was dismissed for default on 23.02.2017.

Heard the Ld. counsel for the petitioner bank. It is demonstrated that the petitioner's counsel had approached the Registry only yesterday to rectify the defects in the dismissed M.A.No.07/17 and to file a fresh affidavit with correct number of days of delay, as it is an admitted fact that the earlier application to condone delay of 198 days was not found to be correct when infact there were more number of days of delay to be condoned by this Tribunal if the said application is to be allowed. However, Ld. counsel Mr.Ashok Rajaraman represented that despite his diligent efforts, he could not file the amended affidavit to consider M.A.No.07/17 and further submits that as this is an OA filed for recovery of little more than Rs.24 Crores and having paid the maximum Court fee of Rs.1.5 lakhs, the dismissal of MA for default could be denial of justice under the substantive law for a procedural defect, which should not be generally the stand to be taken by Courts of law.

It is observed that the Ld. counsel has been only harping on the judgments of Hon'ble Supreme Court but is not proceeding in the manner that the matter has to be dealt with despite availing two opportunities with an express understanding to do so.

Consequently, this MA is dismissed for default and non-prosecution, however without costs."

19. M.A.No.7 of 2017, has been dismissed for default on 23.02.2017 and not for discrepancy in the computation of the number of days of delay. The Tribunal has directed the petitioner to correct the number of days in the dismissed petition, by filing an affidavit. From the perusal of the record of proceedings, dated 28.06.2017, it could be deduced that the learned counsel for the bank was present and heard. There was some variance in computation of number of days of delay in representation and thus, the Tribunal seemed to have directed filing of appropriate affidavit with correct number of days of delay and to forgo interest, for the delay period. On 28.06.2017, Mr.Ashok Rajaraaman, had represented that despite his diligent efforts, he could not file the amended affidavit. He has pleaded to the Tribunal that more than Rs.24 Crores, is involved in the lis and the Bank has paid the maximum court fee of Rs.1.5 lakhs. He has further contended that dismissal of the abovesaid M.A., would amount to denial of justice and therefore, sought for condonation of delay.

20. Without considering the fact that huge public money is involved and in the matter of condonation of delay in representation, no harm or prejudice would be caused to the respondent-borrower, DRT-III, Chennai, has observed that Mr.Ashok Rajaraaman, learned counsel was harping only on the judgments of the Hon'ble Supreme Court, but not proceeded, in the manner, as pointed out, despite availing two opportunities with an express undertaking to do so. When the learned counsel for the Bank has represented that amount sought to be recovered is to the tune of Rs.24 Crores, and Court fee of Rs.1.5 Lakhs has been paid, DRT-III, Chennai, has failed to consider, what substantial justice means when pitted against, length of delay in representation. Reference can be made to a decision in N.Balakrishnan v. M.Krishnamurthy reported in 2008 (228) ELT 162 (SC), the Hon'ble Supreme Court held that,

"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to

consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

21. Under Article 227 of the Constitution of India, every High Court shall have superintendence over the respective Courts/Tribunals. Though instant writ petitions have been filed under Article 226 of the Constitution of India, High Court, exercises jurisdiction, powers of superintendence over all Courts and Tribunals, over the territory, in which, Courts/Tribunals function. Let us consider few cases on the scope of power of superintendence of the High Court under Article 227 of the Constitution of India.

(i) In *Jodhey v. State* reported in AIR 1952 All. 788, after setting out the history of Article 227 of the Constitution of India, the Allahabad High Court held thus,

"9. A comparison of the above provision of law with analogous provisions of law prior to the Constitution of India brings into prominence some important features of the new state of law established by the constitution. The most important feature of Article 227, Constitution of India, is that it has omitted any restriction on the power of the High Court to interfere in judicial matters, which was imposed by Sub-section (2) of Section 224, Government of India Act, 1935. In this way, it has enlarged the power of the High Court and restored the power, which was given to it under the Government of India Act, 1915. It is also significant that the words restricting the power of the superintendence of the High Courts for the time being subject to its appellate jurisdiction, a restriction which was contained not only in the Government of India Act 1935 but also in the Government of India Act, 1915, as well as in the High Court Act, 1861, are also omitted from Article 227 of the Constitution of India. The effect of this omission to my mind is to make it clear beyond doubt that all Courts functioning within the territory in relation to which the High Court exercises its jurisdiction were subject to supervisory jurisdiction of High Court. Thus even special Courts set up under Acts of legislature for specific purposes would also be subject to its jurisdiction. It seems to me that in this regard Article 227 has vested the High Court with a greater power than that given to it even under the Government of India Act, 1915, or the High Court Act, 1861.

It is also relevant in this connection to note that the Constitution of India has given this supervisory power to the High Court not only over all Courts but also over all tribunals throughout

the territories in relation to which it exercises its jurisdiction. The word 'tribunals' did not find a place either in the Government of India Act of 1935 or in the Government of India Act 1915 or in the High Court Act, 1861. The purpose of the addition of the word "tribunals" to Article 227, to my mind was to emphasise the fact that not only bodies which are Courts within the strict definition of that term would be subject to the supervisory jurisdiction of the High Court but all bodies that perform the functions of Courts and are akin to them are drawn within the purview of its supervision and cannot claim exemption from it merely by virtue of the fact that they do not come within the strict category of civil, revenue, or criminal Courts as known under the ordinary law of the land. Certain other minor changes in this Article are also noteworthy. A contrast of the marginal note appended to Article 227 of the Constitution of India with the marginal notes of Section 224, Government of the India Act, 1935, Section 107, Government of India Act 1915, and Section 15, High Courts Act, 1861, is instructive. The marginal note of Article 227 of the Constitution of India is "Power of superintendence over all Courts by the High Courts". This may be contrasted with the marginal note of Section 224, Government of India Act, 1935, which was "Administrative functions of the High Court" and the marginal note of Section 107, Government of India Act, 1915, which was "Powers of High Court with respect to subordinate Courts". Similarly, the marginal note of Section 15, High Courts Act, 1861, was "High Courts to superintend and to frame rules of practice for subordinate Courts". The alteration in this marginal note also emphasises the fact that the powers of the High Court under the Constitution extend not merely to administrative functions but embraces all functions, whether administrative or judicial. It also indicates that this power under the Constitution extends to all Courts and is not confined to "subordinate Courts" as indicated by the marginal note of Section 107, Government of India Act, 1915. A comparison of the draft Constitution with the enacted Constitution shows that the marginal notes were inserted under the authority of and with the knowledge of the Constituent Assembly. Under the above circumstances the view regarding the in admissibility of marginal notes expressed by the Privy Council in *Balraj Kunwar v. Jagatpal Singh*, 31 Ind. App. 132 (P.C.) should be taken to have undergone change both in India as well as in England vide *Iswari Prasad v. N.B.Sen*, 55 Cal. W. N. 719 (F.B.). Marginal notes inserted in those circumstances have been held to be admissible by a

Full Bench decision of the Allahabad-High Court in Ram Saran v. Bhagwat Prasad, A.I.R. 1929 ALL. 53 (F.B.) by a Full Bench decision of the late Chief Court of Avadh in Emperor v. Mumtaz Husain, A. I. E. 1935 Oudh 337 (F.B.) and by a Full Bench decision of the Bombay; High Court in Emperor v. Ismail Sayad Saheb Mujawar, A.I.E. 1933 Bom. 417 (P.B.). In a recent decision of the Bombay High Court reported in the State of Bombay v. Heman Santlal, A.I.R. 1952 Bom. 16, it was held by Chagla C.J. that the marginal notes of the Constitution may be referred to for the purpose of understanding the drift of the Articles. In Suresh Chandra v. Bank of Calcutta Ltd., 54 Cal. W.N 832 at p. 836 the marginal notes of an Indian Act were compared with the corresponding marginal notes of the English Act to elucidate the meaning of the section. The contrary view expressed in the Commr. of Income-Tax Excess Profit Tax v. Parasram Jethanand, A.I.R, 1950 Mad. 631 and Suttlej Cotton Mills Ltd v. Commr, of Income-Tax, West Bengal, A.I.R. 1950 Cal. 551 should not therefore, be accepted without qualification. The opinion which I, however, have formed is independently of the marginal notes and is based on the Article itself viewed in the light of its historical background.

10. To emphasise and to clarify the plenary nature of power of superintendence vested in the High Court the provision of law relating to it has been split up into four clauses. The first clause enunciates the general power of supervision given to High Court over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It is couched in a language which would vest the High Court with a power that is not fettered with any restriction and must embrace all aspects of the functions exercised by every Court and tribunal. On a proper interpretation of this clause it is difficult to my mind to hold that the powers of superintendence are confined only to administrative matters. There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. To fulfil this function it seems to me that the power of superintendence of the High Court over judicial matters is as necessary as over administrative matters. As a matter of fact judicial function of a Court is not less important than its administrative

function. In fact it is more necessary to rectify lapses in judicial matters than defects in administrative matters. A judicial error might affect the rights, liberty and freedom of the subject whereas an administrative error might not do so. To my mind superintendence over judicial functions is a necessary complement of superintendence over administrative functions and it is sometimes very difficult to say where the one ends and the other begins. If the High Court is to perform this function efficiently and effectively, it must act on both sides, otherwise the very power of superintendence will be crippled and what has been achieved on the administrative side might be lost on the judicial side.

11. Clause 2 of Article 227 seems to emphasise the administrative aspect over which the High Court can exercise power of superintendence and enumerates the various instances of superintendence in the administrative field. The use of words "without prejudice to the generality of the foregoing provision" is not without significance. It seems to imply that the power of superintendence over administrative functions given to the High Court does not in any way derogate from the general power of superintendence given by Clause (1).

12. Clause (a) of Article 227 again enumerates certain specific matters which would fall on the administrative side of the work of a Court.

13. Clause (4) shows that the only Courts exempted from the superintendence of the High Court are Courts or tribunals constituted by or under any law relating to the Armed Force's. A mention of the solitary exemption also emphasises the clear field of superintendence which is left within the jurisdiction of the High Court after exempting the prohibited area covered by the Military Courts or tribunals mentioned therein.

14. A reading of the entire Article 227 of the Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the constitution makers was to make the High Court responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is special tribunal constituted under a statute cannot be set up as a bar to the exercise of

this power by the High Court. The prohibited area is to be found within the four corners of the constitution itself and nowhere else.

15. The fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. It seems to me that these powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy. Under this power, the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party."

(ii) In *Trimbak v. Ram Chandra* reported in AIR 1977 SC 1222, the Hon'ble Supreme Court held as follows:

"It is a well-settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution."

(iii) The Hon'ble Apex Court in *Surya Dev Rai v. Ram Chander Rai and Others* reported in (2003) 6 SCC 675 held, a revision could be maintained under certain circumstances, invoking Article 227 of the Constitution of India, and therefore, it is not possible to hold that no revision is maintainable under any provisions of law. In this view, when it is shown that the trial court has failed to exercise its jurisdiction, properly applying the provisions of law, or when

it is so that the trial court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this Court, can be interfered by this Court. The Hon'ble Supreme Court, at paragraph Nos.6 to 39, held as follows:

"6. According to Corpus Juris Secundum (Vol.14, page 121) certiorari is a writ issued from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case.

7. H.W.R. Wade & C.F. Forsyth define certiorari in these words :-

"Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed - that is to say, it is declared completely invalid, so that no one need respect it.

The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion." (Administrative Law, Eighth Edition, page 591).

8. The learned authors go on to add that problem arose on exercising control over justices of the peace, both in their judicial and their administrative functions as also the problem of controlling the special statutory body which was addressed to by the Court of King's Bench. "The most useful instruments which the Court found ready to hand were the prerogative writs. But not unnaturally the control exercised was strictly legal, and no longer political. Certiorari would issue to call up the records of justices of the peace and commissioners for examination in the King's Bench and for quashing if any legal defect was found. At first there was much quashing for defects of form on the record, i.e. for error on the face. Later, as the doctrine of ultra vires developed, that became the dominant principle of control" (page 592).

9. The nature and scope of the writ of certiorari and when can it issue was beautifully set out in a concise passage, quoted hereafter, by Lord Chancellor Viscount Simon in Ryots of Garabandho and other villages Vs. Zamindar of Parlakimedi and Anr. - AIR 1943 PC 164. "The ancient writ of certiorari in England is an

original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated, and the object is to secure by the exercise of the authority of a superior Court, that the jurisdiction of the inferior tribunal should be properly exercised. This writ does not issue to correct purely executive acts, but, on the other hand, its application is not narrowly limited to inferior "Courts" in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits, in British India."

10. Article 226 of the Constitution of India preserves to the High Court power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well-settled. It would suffice for our purpose to quote from the 7-Judge Bench decision of this Court in Hari Vishnu Kamath Vs. Ahmad Ishaque and Ors. - (1955) 1 SCR 1104. The four propositions laid down therein were summarized by the Constitution Bench in The Custodian of Evacuee Property Bangalore Vs. Khan Saheb Abdul Shukoor etc. - (1961) 3 SCR 855 as under :-

".....the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath Vs. Ahmad Ishaque 1955-I S 1104 : ((s) AIR 1955 SC 233) and the following four propositions were laid down :-

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of

its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

11. In the initial years the Supreme Court was not inclined to depart from the traditional role of certiorari jurisdiction and consistent with the historical background felt itself bound by such procedural technicalities as were well-known to the English judges. In later years the Supreme Court has relaxed the procedural and technical rigours, yet the broad and fundamental principles governing the exercise of jurisdiction have not been given a go-by.

12. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.

13. In *Nagendra Nath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam & Ors.*, (1958) SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari were so set out by the Constitution Bench : -

"The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior

proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extra-ordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected and the appellate authority under a statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under Article 226."

14. The Constitution Bench in T.C. Basappa Vs. T. Nagappa & Anr., (1955) 1 SCR 250, held that certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

15. Any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The proceedings of

judicial courts subordinate to High Court can be subjected to certiorari.

16. While dealing with the question whether the orders and the proceedings of subordinate Court are amenable to certiorari writ jurisdiction of the High Court, we would be failing in our duty if we do not make a reference to a larger Bench and a Constitution Bench decisions of this Court and clear a confusion lest it should arise at some point of time. Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashtra and Anr. - (1966) 3 SCR 744, is a nine-Judges Bench decision of this Court. A learned judge of Bombay High Court sitting on the Original Side passed an oral order restraining the Press from publishing certain court proceedings. This order was sought to be impugned by filing a writ petition under Article 226 of the Constitution before a Division Bench of the High Court which dismissed the writ petition on the ground that the impugned order was a judicial order of the High Court and hence not amenable to a writ under Article 226. The petitioner then moved this Court under Article 32 of the Constitution for enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution. During the course of majority judgment Chief Justice Gajendragadkar quoted the following passage from Halsbury Laws Of England (Vol.11 pages 129, 130) from the foot-note :

"(...in the case of judgments of inferior courts of civil jurisdiction) it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p.887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior Court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground".

His Lordship then said :

"The ultimate proposition is set out in terms:

"Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction".* These observations would indicate that in England the judicial orders passed by civil Courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari."

17. A perusal of the judgment shows that the

above passage has been quoted "incidentally" and

that too for the purpose of finding authority for the proposition that a judge sitting on the Original Side of the High Court cannot be called a court 'inferior or subordinate to High Court' so as to make his orders amenable to writ jurisdiction of the High Court. Secondly, the abovesaid passage has been quoted but nowhere the Court has laid down as law by way its own holding that a writ of certiorari by High Court cannot be directed to Court subordinate to it. And lastly, the passage from Halsbury quoted in Naresh Shridhar Mirajkar's case (supra) is from third edition of Halsbury Laws of England (Simond's Edition, 1955). The law has undergone a change in England itself and this changed legal position has been noted in a Constitution Bench decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra and Anr. - (2002) 4 SCC 388. Justice SSM Quadri speaking for the Constitution Bench has quoted the following passage from Halsbury's Laws of England, 4th Edn. (Reissue) Vol.1 (1) :

"103. Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court in the King's Bench for review or to remove indictments and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs."

"109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

18. Naresh Shridhar Mirajkar's case was cited before the Constitution Bench in Rupa Ashok Hurra's case and considered. It has been clearly held : (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by

superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.

19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to High Court are amenable to writ jurisdiction of High Court under Article 226 of the Constitution.

20. Authority in abundance is available for the proposition that an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in *Satyanarayan Laxminarayan Hegde and Ors. Vs. Mallikarjun Bhavanappa Tirumale*, (1960) 1 SCR 890. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

21. Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior court has committed any of the preceding errors occasioning failure of justice.

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High

Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227 with which we are not concerned hereat. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

23. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in Waryam Singh & Anr. Vs. Amarnath & Anr. (1954) SCR 565. The jurisdiction can be traced back to Section 15 of High Courts Act 1861 which 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. Section 107 of the Government of India Act 1915 and then Section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.

Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227.

24. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr., (1986) Supp. SCC 401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of

Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as

commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In Chandrasekhar Singh & Ors. Vs. Siva Ram Singh & Ors., (1979) 3 SCC 118, the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judges Bench summed up the position of law as under :-

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a Court of Appeal.

28. Later, a two-judge Bench of this Court in *Baby Vs. Travancore Devaswom Board & Ors.*, (1998) 8 SCC 310, clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.

Does the amendment in Section 115 of C.P.C have any impact on jurisdiction under Articles 226 and 227?

29. The Constitution Bench in *L. Chandra Kumar Vs. Union of India & Ors.*, (1997) 3 SCC 261, dealt with the nature of power of judicial review conferred by Article 226 of the Constitution and the power of superintendence conferred by Article 227. It was held that the jurisdiction conferred on the Supreme Court under Article 32 of the Constitution and on the High Courts under Articles 226 and 227 of the Constitution is part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even by constitutional amendment, not to speak of a

parliamentary legislation. A recent Division Bench decision by Delhi High Court (Dalveer Bhandari and H.R. Malhotra, JJ) in Criminal Writ Petition NO.s.758, 917 and 1295 of 2002 - Govind Vs. State (Govt. of NCT of Delhi) decided on April 7, 2003 (reported as [2003] 6 ILD 468 makes an indepth survey of decided cases including almost all the leading decisions by this Court and holds - "The power of the High Court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution." The essence of constitutional and legal principles, relevant to the issue at hand, has been correctly summed up by the Division Bench of the High Court and we record our approval of the same.

30. It is interesting to recall two landmark decisions delivered by High Courts and adorning the judicial archives. In Balkrishna Hari Phansalkar Vs. Emperor, AIR 1933 Bombay 1, the question arose before a Special Bench: whether the power of superintendence conferred on the High Court by Section 107 of Government of India Act 1915 can be controlled by the Governor-General exercising his power to legislate. The occasion arose because of the resistance offered by the State Government to the High Court exercising its power of superintendence over the Courts of Magistrates established under Emergency Powers Ordinance, 1932. Chief Justice Beaumont held that even if power of revision is taken away, the power of superintendence over the courts constituted by the ordinance was still available. The Governor-General cannot control the powers conferred on the High Court by an Act of Imperial Parliament. However, speaking of the care and caution to be observed while exercising the power of superintendence though possessed by the High Court, the learned Chief Justice held that the power of superintendence is not the same thing as the hearing of an appeal. An illegal conviction may be set aside under power of superintendence but - "we must exercise our discretion on judicial grounds, and only interfere if considerations of justice require us to do so."

31. In Manmatha Nath Biswas Vs. Emperor, (1932-33) 37 C.W.N. 201, a conviction based on no legal reason and unsustainable in law came up for the scrutiny of the High Court under the power of

superintendence in spite of right of appeal having been allowed to lapse. Speaking of the nature of power of superintendence, the Division Bench, speaking through Chief Justice Rankin, held that the power of superintendence vesting in the High Court under Section 107 of the Government of India Act, 1915, is not a limitless power available to be exercised for removing hardship of particular decisions. The power of superintendence is a power of known and well- recognised character and should be exercised on those judicial principles which give it its character. The mere misconception on a point of law or a wrong decision on facts or a failure to mention by the Courts in its judgment every element of the offence, would not allow the order of the Magistrate being interfered with in exercise of the power of superintendence but the High Court can and should see that no man is convicted without a legal reason. A defect of jurisdiction or fraud on the part of the prosecutor or error on the "face of the proceedings" as understood in Indian practice, provides a ground for the exercise of the power of superintendence. The line between the two classes of case must be, however, kept clear and straight. In general words, the High Court's power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-judges Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors., JT 2003 (4) SC 605, para 28. This Court held :

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the state Legislature;

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;

(iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

33. In Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers & Ors., (2003) 4

Scale 241, another two-Judges bench of this Court dealt with Section 115 of the C.P.C. The Court at the end of its judgment noted the submission of the learned counsel for a party that even if the revisional applications are held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution for which an opportunity was prayed to be allowed. The Court observed - "If any remedy is available to a party, no liberty is necessary to be granted for availing the same."

34. We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away - and could not have taken away - the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self discipline and practice which are well settled.

35. We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran's case relied on by the learned counsel for respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The Full Bench added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:-

"where an aggrieved party approaches the High Court under Art. 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Art.226 of the Constitution would not be maintainable."

36. It seems that the High Court in its decision impugned herein formed an impression from the above-quoted passage that a prayer for issuance of injunction having been refused by trial court as well as the appellate court, both being subordinate to High Court and the dispute being between two private parties, issuance of injunction by High Court amounts to issuance of a mandamus against a private party which is not permissible in law.

37. The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari, also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between Article 226 and Article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in T.C. Basappa Vs. T. Nagappa and Anr., (1955) 1 SCR 250 and Province of Bombay Vs. Khushaldas S. Advani (dead) by Lrs., 1950 SCR 621, as also a three-Judge Bench decision in Dwarka Nath Vs. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr., (1965) 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially. We are therefore of the opinion that the writ of certiorari is directed against the act, order of proceedings of the subordinate Court, it can issue even if the lis is between two private parties.

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 No.46 of 1999 with effect from 01.07.2002 in Section 115 of 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 the CPC Amendment

<https://hcservices.ecourts.gov.in/hcservices/> Act No. 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 the 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 (iii) 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 there against and entertaining a petition invoking certiorari or supervisory jurisdiction of 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 covert itself into a Court of Appeal and indulge in re-appreciation 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.

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 straitjacket formula or rigid rules. Not less than often the High Court would be faced with 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."

(iv) In Following Surya Devi's case, cited supra, in Jeya v. Sundaram Iyyar reported in 2005 (4) MLJ 278, this Court held that,

"when it is shown that the trial Court has failed to exercise its jurisdiction, properly applying the provisions of law, or when it is so that the trial Court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this Court, there can be interference by this Court."

(v) In Managing Director, Makkal Tholai Thodarpur Kuzhuman Ltd., v. V.Muthulakshmi reported in 2007 (6) MLJ 1152, at Paragraph 28, this Court held that,

"28. Therefore, the consistent judicial pronouncement by the Supreme Court as well as this Court makes it very clear that in case where the lower Court passes an order which cannot be accepted by any prudent sense, it is always open to the High Court under Article 227 of the Constitution of India to correct the same by exercising the right of superintendence."

(vi) In B.K.Muniraju v. State of Karnataka and others reported in (2008) 4 SCC 451, the Hon'ble Supreme Court at paragraphs 22 to 25, held as follows:

"22. It is settled law that a writ of Certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of

fact recorded by an inferior tribunal or authority, a writ of Certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

23. It is useful to refer the decision of this Court in *Surya Dev Rai vs. Ram Chander Rai and Others*, (2003) 6 SCC 675 wherein, in para 38, held as under:

"38.(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."

24. It is clear that whether it is 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. It is also clear that 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.

25. As observed in *Surya Dev Rai vs. Ram Chander Rai* (supra), the exercise of jurisdiction under article 226 or 227 of the Constitution cannot be tied down in a straight jacket formula or rigid rules. To put it clear though 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."

(vii) In M/s.World Wide Brands Inv. v. Smt.Dayavanthi Jhamnadas Hinduja and another reported in 2009-1-L.W.658, a Hon'ble Division Bench of the Madras High Court , at paragraph Nos.11 to 22, considered a catena of judgments and held as follows:

"11. In Waryam Sing v. Amarnath, AIR 1954 SC 215, the Apex Court has held that the power of superintendence conferred by Article 227 of the Constitution is to be exercised more sparingly and only in appropriate case in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

12. The above said law is again reiterated by the Apex Court in Singaram Singh v. Election Tribunal, AIR 1955 SC 425 and Nagendra Nath Bora v. Commissioner of Hills Division & Appeals, AIR 1958 SC 398.

13. In T.Prem Sagar v. M/s.Standard Vacuum Oil Company, AIR 1965 SC 111, it has been held that in writ proceedings if an error of law apparent on the face of the records is disclosed and the writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals.

14. In Joint Registrar of Co-Operative Societies, Madras & others v. P.S.Rajagopal Naidu, Govindarajulu and others, AIR 1970 SC 992, the Apex Court has held that the High Courts should not act as a Court of appeal and re-appraise and re-examine the relevant facts and circumstances which led to the making of order.

15. In Muni Lal and others v. Prescribed Authority and others, AIR 1978 SC 29, it has been held that the High Court cannot re-appreciate the evidence and come to its own conclusion different from that of the prescribed Authority.

16. In Ganpat Ladha v. Sashikant Vishnu Shinde, AIR 1978 SC 955, the Apex Court has held that the High Courts cannot justify the exercise of its discretionary powers under Article 227 of the Constitution as to the finding of fact; unless

such finding of fact is clearly perverse and patently unreasonable.

17. In Chandavarkar Sita Ratna Rao v. Ashalata S.Guram, (1986) 4 SCC 447, the Apex Court at page 460, para (4) has held thus:-

"It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 277 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

18. In Ouseph Mathai and others v. M.Abdul Khadir, (2002) 1 SCC 319, the Apex Court in para (4) has held thus:-

"It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt, Article 227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to

keep the inferior Courts and Tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party"

19. In *State v. Navjot Sandhu*, (2003) 6 SCC 641, the Apex Court, at page 656, para (28) has held as under:-

"Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeking that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate court and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

20. In *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, the Apex Court has held that exercise of power under Article 226 is available only to correct the error committed by the Court or the authority and the error should be self-

evidence. The Apex Court had also cautioned that such an error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari.

21. In *Ranjeet Singh v. Ravi Prakash*, (2004) 3 Supreme Court Cases 682 the Apex Court has held that unless, the High Court finds patent error in the order of the tribunal or appellate board, it would not be proper to interfere in such order in exercise of jurisdiction under Article 227 of the Constitution.

22. The Superintendence power of the High Court under Article 227 of the Constitution of India, over all Courts and tribunals is basically to keep the subordinate courts/tribunals/appellate authorities constituted under statutes within their bounds and not for correcting mere errors. The exercise of power is limited to want of jurisdiction, errors of law, perverse findings, gross violation of principles of natural justice and like the one. It may be exercised, if it is shown that grave injustice has been done to the person, who has invoked the jurisdiction with such grievance, the Court does not act as an appellate authority to reappraise the evidence and come to a different conclusion. Even if two views are possible, in exercise of power, the Court would not be justified in substituting its own reason for the reasons of the subordinate courts/tribunals or appellate tribunals/boards. Of course, the power of this Court is not taken away, where the statutory appellate tribunal/board brushes aside the evidence on conjunctures and without giving cogent reasons, which would result in error apparent on the face of the records. Unless, the errors questioned are apparently error, perverse and the findings are not supported by any materials, the exercise of power under Article 227 of the Constitution to interfere with in such orders may not be available."

(viii) In *Ramesh Chandra Sankla v. Vikram Cement* reported in AIR 2009 SC 712, at paragraph 81, held as follows:

"81. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae*, i.e. to meet the ends of

justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must `advance the ends of justice and uproot injustice'."

(ix) Reiterating the powers of the High Court over the functioning of the DRT/DRAT, the Hon'ble Supreme Court in Union of India v. Debts Recovery Tribunal Bar Association reported in 2013 (2) SCC 574, at Paragraph 10.2, held as follows:

"10. Further, we believe that the High Courts are empowered to exercise their jurisdiction of superintendence under Article 227 of the Constitution of India in order to oversee the functioning of the DRTs and DRATs. Section 18 of the RDDBFI Act leaves no scope for doubt in this behalf. It reads thus:

18. Bar of Jurisdiction.- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

Article 227 of the Constitution stipulates that every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction. This power of superintendence also extends to the administrative functioning of these courts and tribunals [Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil [(2010) 8 SCC 329]]. Hence, in light of the above, we expect that all the High Courts shall keep a close watch on the functioning of DRTs and DRAT, which fall within their respective jurisdictions. The High Courts shall ensure a smooth, efficient and transparent working of the said Tribunals. We are confident that through the timely and appropriate superintendence of the High Courts, the Tribunals shall adhere to the rigour of appropriate standards indispensable to the fair and efficient administration of justice."

22. M.A.No.7 of 2017 filed to condone the delay in representation, has been dismissed for default on 23.02.2017. M.A.No.45 of 2017, has been filed within 30 days, from the date of dismissal of M.A.No.7 of 2017. Courts have consistently held that in the matter of condonation of delay in representation, it is between the litigant and Court. Though a specific pleading has been made that appropriate affidavit could not be filed, throwing the said plea in air

and in total disregard to the settled principles of law, in the matter of representation, DRT-III, Chennai, has dismissed the restoration petition, describing the same as, "default".

23. M.A.No.45 of 2017, filed for restoration, could have been ordered and thereafter, in M.A.No.7 of 2017, the Tribunal could have issued suitable directions to the Registry, as stated supra. Even taking it for granted that there is an error in computing the number of days of delay in representation, it is too harsh to dismiss the petition in M.A.No.45 of 2017, filed to restore M.A.No.7 of 2017, filed to condone the delay in representation. By dismissing the petition for restoration, the Tribunal has destroyed the rights of the bank, "recovery of huge public money".

24. As the Hon'ble Supreme Court has directed the High Courts to keep a close watch on the functioning of the DRT/DRAT, which falls within their respective jurisdiction, the Tribunal should pass appropriate orders, keeping in mind, the precedents of the Hon'ble Supreme Court and High Court, within whose jurisdiction, the Tribunal functions.

25. We are satisfied with the reasons assigned in the condone delay petition. Having regard to the above discussion and decisions, in exercise of the powers, under Article 226 of the Constitution of India, we deem it fit to condone the delay in representation and also allow the restoration petition. Hence, the impugned orders, dated 28.06.2017, made in M.A.No.45 of 2017 in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016 and dated 23.02.2017, made in M.A.No.7 of 2017 in O.A.Sr.No.3131 of 2016, on the file of the Debts Recovery Tribunal-III, Chennai, are set aside. Registry of DRT-III, Chennai, is directed to assign number for the Original Application, if the papers are otherwise in order and place the same before the DRT-III, Chennai, for hearing.

26. In the result, the Writ Petitions are ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skm

To

The Debts Recovery Tribunal-III,
Chennai.

+1cc to MR.P.B.Benjamin George, Advocate Sr.No.87764

NRK (CO)
sm:22.1.2018

W.P.Nos.31816 and 31817 of 2017



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