

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17/1/2018

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P (PD).No.3697 of 2017

Sr.V.J.Dhanapal

....

Petitioner

Vs

1. Union Bank of India
rep. By its Authorised Officer
Asset Recovery Branch
2nd Floor, No.583/584
Pooja complex, Avenue Road
Bangalore 560 002.

2. Smt.S.Manjula

3. Mr.Shravan Kumar

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 10th February 2017 passed in R.A.(SA) No.45 of 2015 against the order dated 12/6/2016 passed in S.A.No.34 of 2014 on the file of the debts Recovery Tribunal, Karnataka

at Bangalore, thereby allowing R.A.(SA) No.45 of 2015 and confirming the sale dated 30/9/2013.

For petitioner ... Mr.T.Srinivasaraghavan

For respondents ... Mr.Ramesh
for Mr.Srinath Sridevan

ORDER

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

Challenge in this Civil Revision Petition, is to an order, made in R.A.(SA) No.45 of 2015, dated 10/2/2017, by which the Debts Recovery Appellate Tribunal, Chennai, set aside the order, dated 12/6/2015, made in S.A.No.34 of 2014, by the Debts Recovery Tribunal, Karnataka, at Bangalore.

2. Though auction purchaser has been served and name shown in the cause list, there is no appearance either in person or through Pleader. In the above said circumstances, this Court deems it fit to hear the borrower and the Bank, on the lis and pass appropriate orders.

3. Short facts leading to the case are that, V.J.Dhanapal, revision

petitioner herein, was one of the partners of M/s. Haris Chicken, which availed financial assistance, from Union Bank of India, Bangalore. For the default, account of the borrower was classified as Non-performing Asset. Demand notice, under Section 13 (2) of the SARFAESI Act, 2002, dated 13/5/2012, was issued. Possession notice, dated 20/3/2012, issued under Section 13 (4) of the SARFAESI Act, 2002, was challenged in S.A.No.345 of 2012, before the Debts Recovery Tribunal, Bangalore and the same was dismissed, on 22/1/2013.

4. Union Bank of India, Asset Recovery Branch, Bangalore, has issued a sale notice, dated 29/5/2013, for e-auction, fixing the date of sale, on 30/6/2013. The petitioner herein has challenged the sale notice, in S.A.No.329 of 2013, vide order, dated 20/9/2013, the Debts Recovery Appellate Tribunal, Bangalore, has dismissed the same. Thereafter, Bank has issued auction sale notice, dated 21/9/2013, fixing the date for sale, on 27/9/2013. In the notice, dated 21/9/2013, there were three items of properties in the schedule. On 27/9/2013, items 1 and 2 of the properties in the schedule, were sold. Therefore, Union Bank of India, Asset Recovery Branch, Bangalore, issued another sale

notice, dated 21/9/2013, for auctioning the third item of the property, fixing the sale, on 30/9/2013. On the said date, third item of the property was sold. Sale certificates, dated 17/10/2013, 22/10/2013 and 23/10/2013, respectively were issued. Before the Debts Recovery Tribunal, Bangalore, writ petitioner has filed S.A.No.34 of 2014, for prayers, (a). to set aside the sale notices, dated 21/9/2013 and 27/9/2013, respectively, published in Kannada newspaper, viz., “Kannada Prabha” and in English newspaper, viz., “The New India Express”, (b). restrain Union Bank of India, Asset Recovery Branch, Bangalore, its representatives and Officers from interfering with the peaceful possession and enjoyment of the schedule property and (c). to declare the sale certificate, as not binding on the petitioner.

5. Bank has filed the response.

6. After considering the rival submissions, statutory provisions, in particular, Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, which contemplate issuance of paper publication of thirty days, and the decisions submitted by both parties, Debts Recovery Tribunal,

Bangalore, vide order, dated 12/6/2015, in S.A.No.34 of 2014, set aside the sale notices, dated 21/9/2013 and 27/9/2013 and also the sale certificate, issued in respect of the residential property, bearing No.19 presently, bearing BBMP Khatha No.80 (Old No.51) PID No.35-08-80 in Ward No.35, situated at 1st Main Road, Marenahalli, Bangalore (carved out of land Sy.No.175 of Marenahalli Village), presently, within the limits of Bruhat Bangalore Mahanagara Palike, measuring East to West 30 ft and North to South 40 ft, totally measuring 1200 sq ft, comprising of Ground Floor, residential building of about 6 squares, with all civil amenities.

7. Debts Recovery Tribunal, Bangalore, has also directed Union Bank of India, Asset Recovery Branch, to refund the entire amount deposited by the auction purchaser, third respondent therein, within fifteen days, from the date of the order. Debts Recovery Tribunal, Bangalore, has further directed the petitioner, to pay the registration expenses of the sale certificate and also to pay interest @ 9% p.a., compounded with monthly rests, on the said amount of registration expenses and the interest on the bid amount, deposited by the third respondent/auction purchaser, for purchase of the schedule property,

from the date of deposit, till it is refunded to the third respondent. Debts Recovery Tribunal, Bangalore, also directed the petitioner to pay Rs.75,000/-, as compensation, to the auction purchaser/third respondent, therein, within fifteen days, from the date of passing the order, in S.A.No.34 of 2014, dated 12/6/2015.

8. Debts Recovery Tribunal, Bangalore has further directed that if the writ petitioner fails to pay the said amount towards the registration charges, interest, bid amount deposited and compensation amount, as aforesaid, to the third respondent/auction purchaser, within fifteen days, from the date of passing of the order, in S.A.No.34 of 2014, Union Bank of India, Asset Recovery Branch, Bangalore will pay the same to the bidder/auction purchaser/third respondent and thereafter, recover the said amount, as part of loan from the revision petitioner, as required under law, together with interest, thereon.

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9. Debts Recovery Tribunal, Bangalore has further directed that if the order made in S.A.No.34 of 2014, dated 12/6/2015, is not complied with, the respondent Bank is at liberty to move the Tribunal seeking

suitable relief, as required under law. Debts Recovery Tribunal, Bangalore has also made it clear that the Authorised Officer of Union Bank of India, Asset Recovery Branch, is at liberty to initiate fresh sale proceedings, in respect of the schedule property.

10. Being aggrieved by the order, made in S.A.No.34 of 2014, dated 12/6/2015, by which the Debts Recovery Tribunal, Bangalore, has set aside the auction notices and sale certificates issued, Union Bank of India, represented by its Authorised Officer, Asset Recovery Branch, has filed appeal in RA (SA) No.45 of 2015.

11. Contending inter alia that the action of the authorised Officer, in bringing the property for auction, is bona fide, Bank has contended that the Debts Recovery Tribunal, Bangalore, has failed to protect the auction purchaser and also placed reliance, on the decision of the Hon'ble Supreme Court, in *Janak Raj Vs. Gurudial Singh*, reported in AIR 1967 SC 608. Bank has further contended that Debts Recovery Tribunal, Bangalore, has failed to consider that the revision petitioner was a recalcitrant litigant. Other directions of the Debts Recovery Tribunal,

Bangalore, to pay interest, at the rate of 9% p.a., on the bid amount of the auction purchaser, registration expenses, etc., were also questioned.

12. After considering the rival submissions, earlier round of litigation between the petitioner and the Bank and in particular, the main challenge of the borrower that the appellant Bank had failed to maintain the clear gap of 30 days between the sale notices and thus, there is violation of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, and the decisions in *Vasu P. Shetty Vs. Hotel Vandana Palace and Others* {(2014) 5 Supreme Court Cases 660}, and *Prestige Lights Vs. State Bank of India*, reported in 2007 (8) SCC - 420, and by observing that the borrower has not shown any intention of payment, there is a lack of bona fides and even on an earlier occasion, when auction notice was challenged, it was unsuccessful and thus, in the abovesaid circumstances, borrower/writ petitioner, does not deserve any sympathy and in the above said circumstances, by concluding that the mandatory period of thirty days, as contemplated, under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, have to be ignored, the Debts Recovery Appellate Tribunal, Chennai, vide order, dated 10/2/2017, in R.A.(SA) No.45 of 2015 has set aside the order, made in

S.A.No.34 of 2014, dated 12/6/2015, on the file of the Debts Recovery Tribunal, Bangalore. Sale concluded in favour of the auction purchaser was affirmed. However, quite contrary to the affirmation of sale, the appellate Tribunal has also observed that the borrower/writ petitioner has every right to redeem his property and accordingly, permitted the borrower, to make payment of the entire amount to the Bank, so as to make refund, to the auction purchaser.

13. In the instant Civil Revision Petition, borrower/writ petitioner has challenged the aforesaid order, made in R.A.(SA) No.45 of 2015, dated 10/2/2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

14. Though several grounds have been raised, inviting the attention of this Court to the auction notices, dated 21/9/2013, and 27/9/2013, published in newspapers, and the date fixed for auction of the sale properties therein, decision of the Hon'ble Supreme Court in *Mathew Varghese Vs. M.Amritha Kumar and others* {(2014) 5 Supreme Court Cases 610} and *Vasu P.Shetty Vs. Hotel Vandana Palace and Others*

{(2014) 5 Supreme Court Cases 660}, Mr.T.Srinivasa Raghavan, learned counsel for the revision petitioner submitted that in so far as the first auction notice dated 20/9/2013, bringing three items of property for auction is concerned, there was just seven days notice and in respect of the second auction notice, dated 27/9/2013, bringing one item of property, it was just 3 days notice. According to Mr.T.Srinivasaraghavan, learned counsel for the petitioner, if Rules 8 and 9 of the Enforcement of Security Interest Rules, 2002, are not followed, all consequential proceedings, and sale would become invalid in law. Non-compliance of the said Rules would lead to the conclusion that the resultant sale becomes unsustainable.

15. He submitted that Rule 9 of the Enforcement of Security Interest Rules, 2002, requires that there should be a gap of 30 days between the sale notice and sale. But in the instant case, period of 30 days was not given, between the sale notice and sale. In view of the above said violation, the sale held, on 30/9/2013, is totally invalid and consequently, the sale certificate issued is illegal.

16. He further submitted that the Debts Recovery Appellate Tribunal, has failed to consider that even assuming without admitting that action of the borrower was to protract the proceedings, the secured creditor cannot violate the statutory provisions. The Debts Recovery Appellate Tribunal has failed to consider that whenever there was a move by the first respondent Bank, the petitioner had challenged the same. Thus, the conduct of the petitioner, far from waiving the mandatory requirement, was to confront the first respondent bank, by questioning the validity of its action. The Debts Recovery Appellate Tribunal has failed to note that there is no iota of evidence or material, suggesting any waiver, on the part of the petitioner herein.

17. While referring to the case of Vasu P.Shetty Vs. Hotel Vandana Palace and Others, reported in (2014) 5 SCC 660, the Debts Recovery Appellate Tribunal, at paragraph 8, has misunderstood the ratio of the said judgment and mis interrupted the same. In the reported case, the Hon'ble Apex Court has clearly held that delaying tactics by the borrower cannot be equated to waiver of the mandatory statutory requirements.

18. Learned counsel for the petitioner has further submitted that the Debts Recovery Appellate Tribunal, has grossly erred in criticising the Debts Recovery Tribunal, Karnataka, at Bangalore, which ought to have been avoided by the appellate forum.

19. Based on the counter affidavit filed by the Chief Manager, Asset Recovery Branch, first respondent, Mr.Ramesh for Mr.Srinath Sridevan, learned counsel for the Bank submitted that as on 15/9/2013, a sum of Rs.1,60,32,326/-, was due and payable by the borrower. Earlier, possession notice, dated 20/3/2012, issued under Section 13 (4) of the SARFAESI Act, 2002, was challenged in S.A.No.345 of 2012 and that the same was dismissed by Debts Recovery Tribunal, Bangalore. He further submitted that the sale notice, dated 29/5/2013, was challenged by the borrower, in S.A.No.329 of 2013, and that the same was also dismissed for default, by the Debts Recovery Tribunal, Bangalore, on 20/9/2013. Borrower is a chronic defaulter, not paid any pie, continue to litigate, whenever Bank had taken measures to realise the debt and that therefore, there was no bona fide.

20. Added further, learned counsel for the Bank submitted that properties are situated at Bangalore. Merely because of a portion of cause of action had arisen, within the jurisdiction of this Court, that does not mean that the writ petition is maintainable, on the file of this Court. Thus, he has raised a preliminary objection, as to the exercise of jurisdiction, by this Court, under Article 226 and 227 of the Constitution of India.

21. Learned counsel for the Bank further submitted that when the earlier sale notice, dated 29/5/2013, was challenged, the same was dismissed for default, by the Debts Recovery Tribunal, Bangalore, on 20/9/2013, and therefore, petitioner is not entitled to seek for a prayer, to set aside the subsequent sale notices, dated 21/9/2013 and 27/9/2013, respectively, which is nothing, but continuation of the earlier sale notice, dated 29/5/2013.

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22. Learned counsel for the Bank further submitted that stay of impugned proceedings, dated 20/9/2013 has been sought for, only in respect of the third schedule. Reiterating that the writ petitioner is a

chronic defaulter, and not entitled to the relief sought for, he prayed for dismissal of the Civil Revision Petition.

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

24. Firstly, on the preliminary objection, as regards maintainability of the instant petition, that the properties are situated at Bangalore, and that therefore, merely because the appellate Tribunal is situated within the territorial limits of this High Court, said fact alone would not confer the power of judicial review, under Article 226 and 227 of the Constitution of India, 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."

25. In view of the decision extracted above, objection as to maintainability of the instant Civil Revision Petition, is over ruled. Let us also consider few cases, wherein revisional powers under Article 227 of the Constitution of India, can be exercised.

(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 **Sutlej 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 where 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 tribunal has exceeded its jurisdiction or has not 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 of 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 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 mis-carriage 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 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'."

26. Material on record discloses that Bank has resorted to measures under the SARFAESI Act, 2002. Possession notice, dated 20/3/2012, issued under Section 13 (4) of the SARFAESI Act, 2002, has been challenged in S.A.No.345 of 2012. Debts Recovery Tribunal, Bangalore has dismissed the same. Thereafter, e-auction notice, dated 28/5/2013, has been issued by the Bank, fixing the auction, on 20/6/2013. Revision petitioner has challenged the same, in S.A.No.329 of 2013. When the writ petitioner did not appear, on 20/9/2013, Debts Recovery Tribunal, Bangalore, has dismissed S.A.No.329 of 2013 for default.

27. Merely because the writ petitioner had challenged the

possession notice, dated 20/3/2012, and failed, and the subsequent challenge to the e-auction notice, dated 28/5/2013, was also dismissed for default, the above do not foreclose the right of the revision petitioner, to challenge the subsequent sale notices, dated 21/9/2013 and 27/9/2013, on any legal grounds available.

28. After considering the statutory provisions and decisions, the Hon'ble Supreme Court in Mathew Varghese and M.Amritha Kumar and Others, reported in (2014) 5 Supreme Court Cases 610, held as follows:-

“53. We, therefore, hold that unless and until a clear 30 days notice is given to the borrower, no sale or transfer can be resorted to by a SECURED CREDITOR. In the event of any such sale properly notified after giving 30 days clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the SECURED CREDITOR cannot effect the sale or transfer of the SECURED ASSET on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place

pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the SECURED CREDITOR and the borrower. It is therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the

SARFAESI Act, in particular Section 13(1) and (8) of the said Act.

55. Therefore, once the Securitisation Application of the borrowers, namely, Respondents 1 and 2 was dismissed on 27.12.2007, even assuming that there was no impediment for the SECURED CREDITOR, namely, the 4th Respondent-Bank to resort to sale under the provisions of the SARFAESI Act, as held by us in the earlier paragraphs, there should have been a fresh notice issued in accordance with Rules 8(6) and 9(1) of the Rules, 2002. Unfortunately, the 4th Respondent-Bank stated to have effected the sale on 28.12.2007 by accepting the tender of the Appellant and by way of further process, directed the Appellant to deposit the 25% of the amount on that very day and also directed to deposit the balance amount within 15 days, which was deposited by the appellant on 11-1-2008.

29. In Vasu P. Shetty Vs. Hotel Vandana Palace and Others, reported in {(2014) 5 Supreme Court Cases 660}, the Hon'ble Supreme Court held as follows:-

“12. We may point out, at the outset, that the opinion of the High Court on the interpretation of sub-Rules (5) and (6) of Rule 8 of the Rules is flawless. In this behalf it would be pertinent to mention that there is an imprimatur of this court as identical meaning is assigned to these provisions. In the case of Mathew Varghese v. M. Amritha Kumarr & Ors.; 2014 (2) SCALE 331. The aforesaid judgment has been followed by this very Bench of the Court in C.A. No. 3865 of 2014 titled as [J. Rajiv Subramanian & Anr. v. M/s Pandiyas & Ors.](#) decided on March 14, 2014, wherein the earlier referred case has been discussed in the following manner:-

“12. This Court in the case of Mathew Varghese Vs. M. Amritha Kumar & Ors. examined the procedure required to be followed by the banks or other financial institutions when the secured assets of the borrowers are sought to be sold for settlement of the dues of the banks/financial institutions. The Court examined in detail the provisions of the [SARFAESI Act, 2002](#). The Court also examined the detailed procedure to be followed by the bank/financial institutions under the Rules, 2002. This Court took notice of Rule 8, which relates to Sale of immovable secured assets and Rule 9 which relates to time of sale, issue of sale certificate and delivery of possession etc. With regard to [Section 13\(1\)](#), this Court observed that [Section 13\(1\)](#) of SARFAESI Act, 2002 gives a free hand to the secured creditor, for the purpose of enforcing the secured interest without the intervention of Court or Tribunal. But such enforcement should

be strictly in conformity with the provisions of the [SARFAESI Act](#), 2002. Thereafter, it is observed as follows:-

“27..... A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any SECURED CREDITOR may be entitled to enforce the SECURED ASSET created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the [SARFAESI Act](#).”

13. This Court in Mathew Varghese case, further observed that the provision contained in [Section 13\(8\)](#) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers in as much as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under [Article 300A](#) of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset can not deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in the [SARFAESI Act](#), 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to

ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or any one on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the [SARFAESI Act](#), 2002.

14. Thereafter, in Paragraph 27, the Court observed as follows:-

“30. Therefore, by virtue of the stipulations contained under the provisions of the [SARFAESI Act](#), in particular, [Section 13\(8\)](#), any sale or transfer of a SECURED ASSET, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the SECURED CREDITOR with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.”

15. As noticed above, this Court also examined Rules 8 and 9 of the Rules, 2002. On a detailed analysis of Rules 8 and 9(1), it has been held that any sale effected without complying with the same would be unconstitutional and, therefore, null and void.

30. Possession of the secured asset, sale, including the right to

transfer by means, assignment, management of the business or borrower, etc., each is a separate cause of action, and whenever the Bank takes any one of the measure or all the above, the borrower has a right to challenge the same, in the manner known to law.

31. In the light of the above discussion and decision in Vasu P. Shetty's case, contention of the Bank that having failed in their earlier attempt to challenge the sale notice and possession, borrower has no right to challenge the subsequent sale notices, dated 21/9/2013 and 27/9/2013 and consequently, the sale certificates, dated 17/10/2013, 22/10/2013 and 23/10/2013 are not tenable, and hence rejected.

32. The main contention of the writ petitioner is that Rules 8 and 9 of the Security Interest (Enforcement) Rules 2002 are mandatory and that in no circumstances, the same can be ignored. Except alleging that the petitioner has not even paid a single penny, from the date of initiation of SARFAESI proceedings, 2002, and in the abovesaid circumstances, the Appellate Tribunal was right in ignoring the mandatory provisions, no other submission has been made by the

learned counsel appearing for the Bank.

33. Now, let us consider the auction notices, issued by the Bank. Earlier, notice, dated 28/5/2013, has been issued by the Bank, fixing the auction, on 20/6/2013. Though it was challenged in S.A.No.329 of 2013, on 20/9/2013, the same was dismissed for default. However, Auction, dated 20/6/2013, had not taken place. Sale notice, dated 28/5/2013, had lapsed, on 20/6/2013. We have already observed that the dismissal of S.A.No.329 of 2013, would not prohibit the borrower/guarantor, to challenge any subsequent sale notice. Sale notice, dated 20/9/2013, bringing three items of property, on 27/9/2013, is extracted supra. In the opening sentence of the tender-cum-auction sale notice, it is stated as hereunder”-

“In continuation of the e-auction notice, published in Indian Express and Kannada Prabha, on 29/5/2013, under SARFAESI Act, 2002 the under mentioned property items will be sold on 27/9/2013 at 11 a.m to 12 noon.

34. Reading of the above, tender cum auction notice, dated

20/9/2013, has been issued, in continuation of the earlier notice, dated 29/5/2013. Between the subsequent sale notice and sale, there was only seven days notice.

35. Writ petitioner has contended that item Nos.1 and 2 of the schedule mentioned, in the tender-cum-auction, dated 20/9/2013, have been sold. In respect of the third item of property mentioned in the tender-cum-auction, dated 20/9/2013, another tender cum auction notice, dated 27/9/2013, has been issued to bring the same for auction, on 30/9/2013. Here again, the opening sentence of the tender-cum-auction-cum-sale notice, dated 27/9/2013 reads thus:-

“In continuation of the e-auction notice published in Indian Express and Kannada Prabha on 29/5/2013, 21/9/2013 under SARFAESI Act, 2002, the property would be sold on 30/9/2013 between 11 am and 12 noon.”

36. As stated supra, notice dated 27/9/2013, is stated to be a continuation of the earlier notices, and that there was just three days

gap between the tender cum auction notice and sale.

37. Property described as item No.3 in the notice, dated 20/9/2013, is the same, in the notice, dated 27/9/2013. Sale certificates issued on 17/10/2013, 22/10/2013 and 23/10/2013, to the auction purchasers, in respect of the properties, are extracted hereunder:-

Schedule 7
Rule 9 (b)
SALE CERTIFICATE

Whereas

The undersigned being the Authorised Officer of the Union Bank of India, Asset Recovery Branch, Avenue Road, Bangalore, under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in exercise of the powers conferred under Section 13 read with Rule 9 of the Security Interest Enforcement Rules, 2002, sold on behalf of Union Bank of India, Asset Recovery Branch, in favour of Mr.Sharavan Kumar, aged 31 years, S/o.G.Nenaram Rathore, residing at No.65/4, Magadi Main Road, Ranganathapuram, Kamakshipalaya, Bangalore 79, the immovable property shown in the schedule below secured in favour of the Bank by M/s. Harrys Meat Mart, M/s. Harrys Military Hotel, M/s. Harrys Chicken, M/s. Harrys Kebab Corner, towards the financial facility offered by Vijaya Nagar Branch. The undersigned acknowledge the receipt of the sale price of Rs.30,20,000/- (Rupees Thirty lacs twenty thousand only) in full and handed over the delivery and

possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of money demanded by the undersigned.

DESCRIPTION OF IMMOVABLE PROPERTY

Residential building bearing No.14, 3rd Cross, Assessment No.48, Khatha No.1870, Priyadarshini Layout, Malagalu Village, Moodala Palya, Bangalore 560 072 total admeasuring 1200 Sq.ft together with all rights, appurtenances whatsoever whether underneath or above the surface of the property and bounded on the

East by: Property of Meena Sudhakar
West by: Private property + high tension line
North by: 22" road
South by: Property of Munikrishna

Schedule 7
Rule 9 (b)

SALE CERTIFICATE

Whereas

The undersigned being the Authorised Officer of the Union Bank of India, Asset Recovery Branch, Avenue Road, Bangalore, under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in exercise of the powers conferred under Section 13 read with Rule 9 of the Security Interest Enforcement Rules, 2002, sold on behalf of Union Bank of India, Asset Recovery Branch, in favour of Smt.S.Manjula, W/o. Nagaraj, T.A, aged 40 years, No.8, 4th Cross, Maruthi Nagar, Chandra Lay Out, Bangalore 560 072, the immovable property shown in the schedule below secured in favour of the Bank by

M/s. Harrys Meat Mart, Mr.V.J.Dhanapal Naidu & Mrs. Dhanabhagya G.K towards the financial facility offered by Vijaya Nagar Branch. The undersigned acknowledge the receipt of the sale price of Rs.41.65 lacs (Rupees Forty one lacs sixty five thousand only) in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of money demanded by the undersigned.

DESCRIPTION OF IMMOVABLE PROPERTY

All that piece and parcel of Municipal Site No.10, I B Main Road, Nagarbhavi, 39th Ward, Khatha No.55/5, Yeshwanthpur Hobli, Bangalore North Taluk, measuring East to West 30 ft and North to South by 40 ft totally 1200 sq ft together with all rights, appurtenances whatsoever whether underneath or above the surface of the property and bounded on the

East by: Site No.14
West by: Road
North by: Site No.4
South by: Site No.6

Schedule 7

Rule 9 (b)

SALE CERTIFICATE

Whereas

The undersigned being the Authorised Officer of the Union Bank of India, Asset Recovery Branch, Avenue Road, Bangalore, under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in exercise of the powers conferred under Section 13 read with Rule 9 of the Security Interest Enforcement Rules, 2002, sold on behalf of Union Bank of India, Asset Recovery Branch, in favour of Mr.Sharavan Kumar, aged 31 years, S/o.G.Nenaram Rathore, residing at No.65/4, Magadi Main Road, Ranganathapuram, Kamakshipalaya,

Bangalore 79, the immovable property shown in the schedule below secured in favour of the Bank by M/s. Harrys Chicken, V.J.Dhanpal & Dhanbagya, towards the financial facility offered by Vijaya Nagar Branch. The undersigned acknowledge the receipt of the sale price of Rs.76,20,000/- (Rupees Seventy six lacs twenty thousand only) in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of money demanded by the undersigned.

DESCRIPTION OF IMMOVABLE PROPERTY

All that piece and parcel of residential site bearing No.19, presently bearing BBMP Khatha No.80 (Old No.51) PID No.35-08-80 in Ward No.35, situated at I I Main Road, Marenahalli, Bangalore (carved out of land Sy.No.175 of Marenahally Village), presently within the limits of Bruhut Bangalore Mahanagar Palike, Bangalore, measuring East to West 30 ft and North to South 40 ft totally admeasuring 1200 sqft comprising of residential building of about 8 squares with all civil amenities and bounded on

East by: Road
 West by: Property bearing Site No.20
 North by: 20th Main road (Marenahalli Main Road)
 South: Others property

38. Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 are extracted hereunder:-

WEB COPY

“8. Sale of immovable secured assets:

(1) to (4)

(5) Before effecting sale of the immovable

property referred to in sub-rule (1) of rule 9 the Authorised Officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

- (a) By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets;
- (b) By inviting tenders from the public.
- (c) By holding public auction; or
- (d) By private treaty.

6) The authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets, under sub-rule (5):

Provide that if the sale of the such secured asset is being effected either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include:

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) The secured debt for recovery of which the property is to be sold.

(c) Reserve price, below which the property may not be sold.

(d) Time and place of public auction or the time after which sale by any other mode shall be completed.

(e) Depositing earnest money as may be stipulated by the secured creditor.

(f) Any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

9. Time of sale, issues of sale certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in

the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the Authorised Officer and shall be subject to confirmation by the secured creditor. Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 9.

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of 25 percent of the amount of the sale price, to the property shall forthwith be sold again. (4) The balance amount of purchase price payable shall paid by the purchaser to the Authorised Officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agree upon in

writing between the parties.

(4). The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period (as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months).

(5) In default of payment within the period mentioned in sub- rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the Authorised Officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is

subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him. [Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalisation of the sale.]

(8) On such deposit of money for discharge of the encumbrances the Authorised Officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.”

39. Merely because the petitioner has committed default in payment and even taking it for granted that there was dilatory tactics, in repayment, and that the borrower has been litigating, by filing applications before the Tribunal, the same are not tenable grounds, to arrive at the conclusion that there was waiver of statutory provisions, by the borrower of the notice period of 30 days and that the said mandatory period of 30 days, can be ignored. Decision of Debts Recovery Appellate Tribunal, Chennai is contrary to the well settled judicial pronouncements of the Hon'ble Supreme Court.

40. Going through the impugned judgment made in R.A.(SA) No.45 of 2015, we are unable to understand as to how the Appellate Tribunal, having confirmed the sale, in favour of the auction purchaser, still enabled the borrower to pay the entire amount to the Bank to refund to

the auction purchaser. Such direction of Debts Recovery Appellate Tribunal, Chennai, is totally against the confirmation of sale. Decision and directions of the Tribunal stated supra, are contradictory.

41. Learned counsel appearing for the petitioner submitted that subsequent to the filing of the instant Civil Revision Petition, borrower has been dispossessed, which submission has been refuted by the Bank. Though the above said submission is disputed, as per Section 17 (3) of the SARFAESI Act, 2002, if the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to be conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order

- a. declare the recourse to anyone or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and
- (b). restore the possession of secured assets or management of secured

assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c). pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

42. In the light of the above discussion and decisions, stated supra, order, dated 12/6/2015, made in R.A.(SA) No.45 of 2015, passed by the Debts Recovery Appellate Tribunal, Chennai, is set aside.

43. Though we have set aside the order, dated 12/6/2015, passed in R.A.(SA) No.45 of 2015, passed by the Debts Recovery Appellate Tribunal, Chennai, equity demands that interest of the auction purchaser also requires should be protected. Therefore, we hereby direct Union Bank of India, to refund the bid amount with 9% interest, to the auction purchaser, within thirty days from the date of receipt of a copy of this order. Compensation of Rs.75,000/- awarded by the Debts Recovery Tribunal, is set aside. The petitioner/borrower shall pay the registration charges, to the auction purchaser, within one month from the date of

receipt of a copy of this order.

44. In as much this Court has set aside the sale notices, and consequent to the sale certificates, stated supra, if the petitioner is dispossessed, auction purchaser and Union Bank of India, are directed to restore possession of the aforementioned property to the writ petitioner, within one month, from the date of receipt of a copy of this order.

45. Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K.,J.) (V.B.S.,J.)

17th January 2018

mvs.

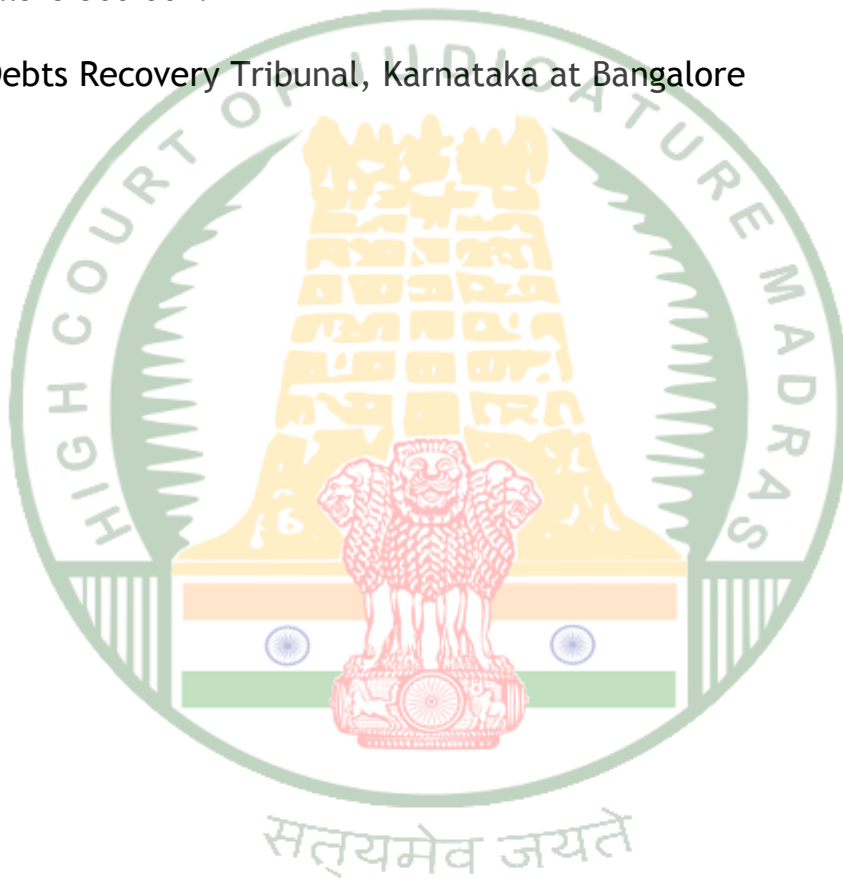
Index: Yes

Internet: Yes.

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To

1. The Authorised Officer
Union Bank of India, Asset Recovery Branch
2nd Floor, No.583/584,Pooja complex, Avenue Road
Bangalore 560 002.
2. The Debts Recovery Tribunal, Karnataka at Bangalore



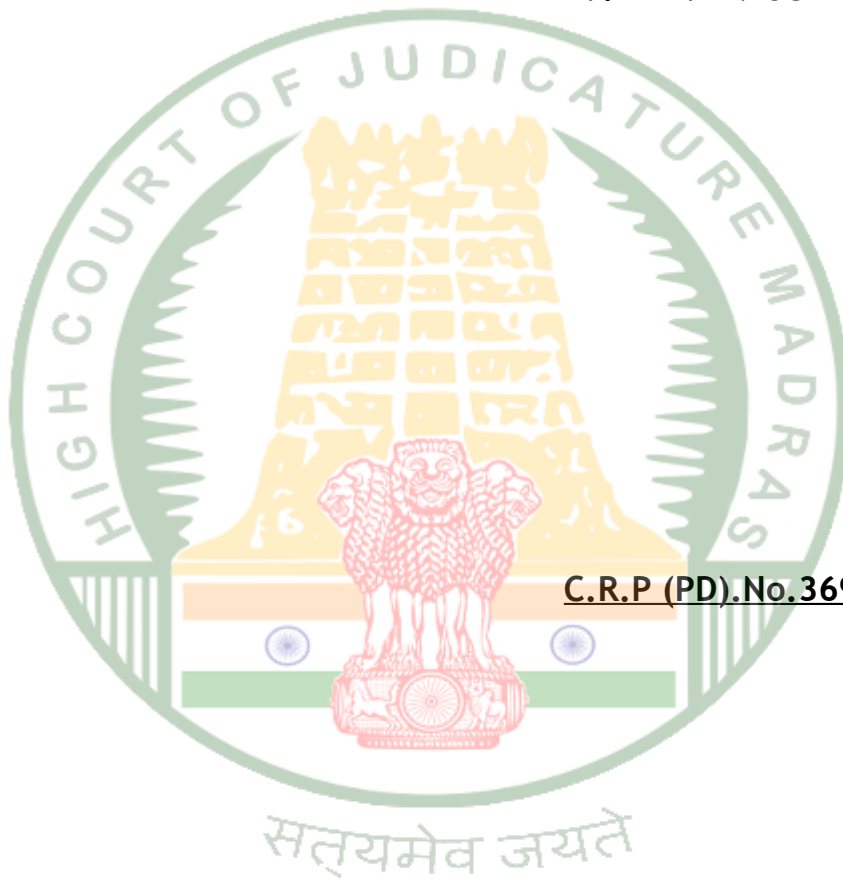
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S.MANIKUMAR, J

AND

V.BHAVANI SUBBAROYAN,J

mvs



C.R.P (PD).No.3697 of 2017

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17/1/2018