

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.11.2018

Pronounced on: 20.12.2018

C O R A M

The Honourable Mr. Justice S. Manikumar
a n d
The Honourable Mr. Justice Subramonium Prasad

Civil Revision Petition No. 3739 of 2016

The Church of South India Trust Association
rep. By Rev. Dr. Daniel R. Sadananda
Honorary Secretary
a n d

Mr. C. Robert Bruce
Honorary Treasurer
5 Whites Road
Royapettah
Chennai 600 014.

...Petitioner/1st Respondent

Vs

1. John Dorai
2. Vimal Sukumar
3. Abraham Bennet
4. Mohanraj Arumainayagam
5. Dyvasirvadam Govada
6. Udayaraj Kaunds
7. Robert Bruce Chellappan
8. Thomas Oommen Kanjirapally
9. Daniel Rathnakara Sadananda
10. Samuel Sudir Govada
11. Arthur Sadhanandham

...Respondents/Petitioner/
Respondents 2 to 11

Prayer:

Petition filed under Article 227 of the Constitution of India against the order dated 18/11/2016 in C.A.No.12 of 2016 in C.P.No.2 of 2016 on the file of the Hon'ble National Company Law Tribunal Bench at Chennai.

For petitioner ... Mr. V. Prakash
Senior Counsel
for M/s. Adrian D. Rozario

For respondents ... Mr.A.L.Somayaji
Senior Counsel
for Mr.G.Vasudevan
for R.1.
Mr.Mr.V.Prakash
Senior Counsel
for M/s. Adrian D.Rozario
for R2 to R11
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O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant revision petition is directed against an order, dated 18/11/2016, passed by the National Company Law Tribunal, Chennai, in C.A.No.12 of 2016 in C.P.No.2 of 2016.

2. Facts in brief are as follows:-

(i) The revision petitioner is a Company incorporated under Section 25 of the Companies Act, 1956. The Company was primarily incorporated to aid, and further the work of the Church of South India in those parts of India where the Church of South India may function and for that purpose to do and carry out or assist in doing or carrying out all such matters and things as are likely to promote the objects of such Church and in particular assist pecuniarily or otherwise all or any of the societies, hostels, Tribunaling houses, hospitals, dispensaries, industries, homes refugees and other charities now existing are to be started in future in connection with the Church.

(ii) Respondents herein approached the National Company Law Tribunal, by filing a petition, under Section 241 of the Companies Act, 2013, alleging several acts of operation and mismanagement, on the part of the revision petitioner herein. In short, the allegations in brief are:-

(i). The Managing Committee is acting clandestinely, and is acting against the interest of the stakeholders.

(ii). Large number of financial frauds are happening in the Company.

(iii). Assets worth crores of rupees meant only for the poor beneficiaries or stakeholders are being swindled by the Managing Committee.

(iv). Offices of the Registrar of Companies and the Regional Director, Ministry of Corporate Affairs, has already found that there are serious financial irregularities and have recommended for the enquiry by the Serious Frauds Investigation Office.

(v). Unless protected now, the entire assets will be misused or encumbered by the present office bearers thereby causing irreparable damage to the stakeholders or beneficiaries.

(iii) The revision petitioner, on receipt of the notice from the National Company Law Tribunal, filed an application C.A.12 of 2016, challenging the maintainability of the petition filed for oppression and mismanagement. According to the revision petitioner, in a case of a Company not having share capital, a petition under Section 241 of the Companies Act for oppression and mis-management is maintainable only when not less than 1/5th of the total number of members of the Company present such an application to the Tribunal. According to them, even one of the petitioners (respondents herein) is not a member and therefore, the application is not maintainable.

(iv) According to the revision petitioner, neither the first respondent nor the other applicants who had given their consent authorising the petitioner No.1 to file the petition, under Section 241 of the Companies Act, are members of the petitioner Company and therefore, the requirements of Sections 244 of the Companies Act, are not satisfied.

(v) The National Company Law tribunal, by the impugned order, dismissed the application, challenging the maintainability, stating that under the circumstances, as discussed in the order, the Company Petition cannot be dismissed at the threshold because it requires a detailed enquiry into the matter complained of. The National Company Law Tribunal, in exercise of the powers conferred under proviso to Section 244 of the Companies Act, 2013, waived the requirements of Section 244 (1) (b) of the Companies Act, 2013, by treating the Company Petition as under Order 1 Rule 8 of the Civil Procedure Code, as a representative petition r/w. Section 241 of the Act, 2013, for the purpose of proceeding to enquire into the matter complained of. The National Company Law Tribunal, removed all the Directors and Managing Committee, including the Office bearers and appointed Hon'ble Mr.Justice C.T.Selvam, as the Chairman of the Company.

3. Material on record discloses that since the Hon'ble Mr.Justice C.T.Selvam, has not yet retired, some other retired Judge of the High Court has been nominated to look after the affairs of the Company. It is this order, which is challenged in the revision petition.

4. This Court, by an order, dated 28/11/2016, granted interim stay of the operation of the impugned order, subject to the condition that revision petitioner, and others in Management of the Company, shall not assign, alienate or encumber any of the properties of the Company, in any manner until further orders.

5. Mr.A.L.Somayaji, learned Senior Counsel appearing for the first respondent has raised a preliminary objection stating

that the present petition under Article 227 of the Constitution of India is not maintainable in view of the appellate remedy provided under Section 421 of the Companies Act 2013. It is submitted that an appeal is provided under Section 421 of the Companies Act against any order of the National Company Law Tribunal to the National Company Law Appellate Tribunal.

6. Section 421 of the Companies Act, 2013, reads as under:-

"421. Appeal from orders of Tribunal:-

(1). Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2). No appeal shall lie to the Appellate Tribunal from an order made by the tribunal with the consent of parties.

(3). Every appeal under sub-Section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4). On the receipt of an appeal under sub-Section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5). The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal."

7. The learned Senior Counsel, contended that the National Company Law Tribunal has been formed as a specialised body under the Companies Act, 2013, to deal with the issues relating to Company. An appeal from every order of the National Company Law tribunal, lies to the National Company Law Appellate Tribunal, under Section 421 of the Companies Act, 2013, which is also a specialised body, headed by a retired Judge of the Hon'ble Supreme Court and having judicial and technical members. According to the learned Senior Counsel, once there is a specialised Appellate forum constituted under the Companies Act, High Courts must not interfere with the orders passed by the National Company Law tribunal, in exercise its powers under Article 227 of the Constitution of India.

8. On the other hand, Mr.V.Prakash, learned Senior Advocate appearing for the petitioner would strenuously urge that the powers under Article 227 of the Constitution of India is available to any person who is aggrieved by an abuse of process of law. According to him, when an authority assumes jurisdiction, when there is a complete absence of it, and passes such orders which are incapable of being reversed, then the High Court as a Court of superintendence must step in to remedy the error.

9. Learned Senior Counsel would place heavy reliance, on SURYA DEV RAI Vs. RAM CHANDER RAI AND OTHERS {2003 (6) SCC 675}, wherein at paragraph Nos.38 and 39, it has been observed as under:-

"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. (emphasis supplied).

(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."

10. Learned Senior Counsel would state that the petition as framed is not maintainable under Section 241 of the Companies Act. He would state that under Section 244 of the Companies Act, in the case of a Company not having a share capital a petition under Section 241 is maintainable only when it is presented by at least 1/5th of the total of its members. Section

244 of the Act, 2013 reads as under:-

Section 244 "Right to apply under section 241:-

(1) The following members of a Company shall have the right to apply under Section 241, namely:-

(a) in the case of a Company having a share capital, not less than one hundred members of the Company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b). in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241."

11. According to the learned Senior Counsel, none of the applicants are not members of the revision petitions and are therefore, cannot maintain a petition. He would rely on Article 4 and 5 of the Articles of Association, which defines the members.

4. The first members of Association shall be:		
1.	The Venerable Archdeacon J. White	The Venerable Archdeacon J. White
2.	Mr.L.D.Miller	Mr.L.D.Miller
3	Mr.C.J.Lucas	Mr.C.J.Lucas
4	Rev.L.J.Thomas	Rev.L.J.Thomas
5	Mr.P.K.Mon Singh	Mr.P.K.Mon Singh
6	Rev.A.M.Payler	Rev.A.M.Payler
7	Rev.T.R.Foulger	Rev.T.R.Foulger
8	The Venerabl Archdeacon P.C.Kora	The Venerabl Archdeacon P.C.Kora
9	The Venerable Archdeacon E.M.Spear	The Venerable Archdeacon E.M.Spear
10	Mr.M.G.Jesupatham	Mr.M.G.Jesupatham

11	Mr.S.J.Savarirayan	Mr.S.J.Savarirayan
12	Rev.B.C.D.Mather	Rev.B.C.D.Mather
13	Rev.V.J.Chelllah	Rev.V.J.Chelllah
14	Rev.P.Gurushantha	Rev.P.Gurushantha
15	Rev.G.Whittaker	Rev.G.Whittaker
	Who shall remain members until replaced by members elected by the Synod of the Church and thereafter members shall be such persons as shall be elected as members by the Synod of Church. The Moderator, The General Secretary and the Treasurer of Synod of the Church shall be ex-officio members.	Who shall remain members until replaced by members elected by the Synod of the Church and thereafter members shall be such persons as shall be elected as members by the Synod of Church. The Moderator, The Deputy Moderator, the General Secretary and the Treasurer of Synod of the Church shall be ex-officio members.

12. Learned Senior Counsel would also rely on Section 2 (55) of the Companies Act, 2013, which defines the term 'member' as under:-

(1). the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii). Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii). Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository."

13. According to the learned Senior Counsel, since not even one of the applicant is a member, the petition under Section 241 of the Companies act, alleging oppression and mis-management, is not maintainable. He would further submit that the National

Company Law Tribunal could exercise its powers under the proviso to waive any of the requirements under Section 244 of the Companies Act, to enable the members to apply under Section 241 of the Companies act only if at least one member is there to maintain the application. In the absence of even one member the Company petition is not maintainable.

14. He would further submit that the Tribunal has exercised its jurisdiction which is not vested in it at all, in as much it has entertained an application which is not maintainable and further, it has gone ahead and while considering an application for maintainability of the petition has passed interim orders by removing all the Directors of the Company and further, appointing a retired Judge to take over the Company. He would further submit that the High Court has jurisdiction to entertain in such matters where the authority has over stepped or crossed the lines of jurisdiction and has acted in flagrant disregard of law or the rules of procedure and the exercise of jurisdiction has resulted in failure of justice and grave injustice has been caused to the Company.

15. The National Company Law Tribunal and the National Company Law Appellate Tribunal were created under the Companies Act, 2013. They are specialised bodies which have been created to adjudicate upon the disputes arising under the Companies Act and the Insolvency and Bankruptcy Code. When an identical issue arose regarding entertaining a petition under Article 227 of the Constitution of India in matters arising from the Arms Tribunal, in UNION OF INDIA AND OTHERS Vs. MAJOR GENERAL SHRI KANT SHARMA AND ANOTHER {(2015) 6 SUPREME COURT CASES - 773}, after referring to all the case laws, the Hon'ble Supreme Court has observed as under:-

"36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under ssssssArticle 226 of the Constitution of India. (Refer: In the case of L. Chandra and S.N. Mukherjee reported in 1997 3 SCC 261).

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: In the case of Mafatlal Industries Ltd

and others Vs. Union of India and others reported in 1997 (5) SCC 536).

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: In the case of Nivedita Sharma vs. Cellular Operators Assn. of India reported in (2011) 14 SCC 337).

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: In the case of Nivedita Sharma vs. Cellular Operators Assn. of India reported in (2011) 14 SCC 337)."

16. In {(2011) 4 Supreme Court Cases 337} NIVEDITA SHARMA Vs. CELLULAR OPERATORS ASSOCIATION OF INDIA AND OTHERS, while dealing with the issue regarding entertaining 227 petition, arising out of an authority constituted under an Act, which provides for a hierarchy of Courts, The Hon'ble Supreme Court observed as under:-

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation-L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

12. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)

"7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

"11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

'... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask and Co.* [(1939-40) 67 IA 222 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556] , it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative

remedy. However, the proposition laid down in *Thansingh Nathmal v. Supt. of Taxes* [AIR 1964 SC 1419] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

17. In the light of the above, we shall now consider whether the Division Bench of the High Court committed an error by entertaining the writ petition filed by the respondents.

18. The 1986 Act was enacted for the better protection of the interests of consumers by making provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes. The object and purpose of enacting the 1986 Act is to provide for simple, inexpensive and speedy remedy to the consumers who have grievance against defective goods and deficient services. This benevolent piece of legislation intended to protect a large body of consumers from exploitation.

19. Prior to the 1986 Act, the consumers were required to approach the civil court for securing justice for the wrong done to them and it is a known fact that the decision of the litigation instituted in the civil court could take several years. Under the 1986 Act, the consumers are provided with an alternative, efficacious and speedy remedy before the Consumer Forums at district, State and national level.

20. In *Fair Air Engineers (P) Ltd. v. N.K. Modi* [(1996) 6 SCC 385] this Court referred to the judgment in *LDA v. M.K. Gupta* [(1994) 1 SCC 243] and observed: (*N.K. Modi case* [(1996) 6 SCC 385] , SCC p. 393, para 15)

"15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the

provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words 'in derogation of the provisions of any other law for the time being in force' would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure i.e. to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

17. Similarly, the Hon'ble Supreme Court in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal {(2014) 1 Supreme Court Cases 603}, has observed as under:-

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State

of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corp'n. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72). 13. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: "12. In Thansingh Nathmal v.

Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

"7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11) "11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486 in the following passage: (ER p. 495).

"... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*, 1935 AC 532 (PC) and *Secy. of State v. Mask and Co.*, AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

(See: *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR 1952 SC 192; *CCE v. Dunlop India Ltd.*, (1985) 1 SCC 260; *Ramendra Kishore Biswas v. State of Tripura*, (1999) 1 SCC 472; *Shivgonda Anna Patil v. State of Maharashtra*, (1999) 3 SCC 5; *C.A. Abraham v. ITO*, (1961) 2 SCR 765; *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433; *H.B. Gandhi v. Gopi Nath and Sons*, 1992 Supp (2) SCC 312; *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1; *Tin Plate Co. of India Ltd. v. State of Bihar*, (1998) 8 SCC 272; *Sheela Devi v. Jaspal Singh*, (1999) 1 SCC 209 and *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569)

14. In Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

"23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.""

15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of

Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. vs. State of Haryana*, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon."

18. In *Miss MANECK GUSTEDJI BURJARJI VS. SARFAZALI NAWABALI MIRZA* {(1997) 1 SUPREME COURT CASES 227}, the Hon'ble Supreme Court observed as under:-

"6. It is very difficult to appreciate the reasoning behind the order made by the High Court. It is to say the least an extraordinary order which flies in the face of law and judicial procedure. The respondent had clearly a legal remedy available to him by way of an appeal against the decree of the City Civil Court and this remedy was not only adequate but more comprehensive than the one under Article 227 of the Constitution. Even so, for some inexplicable reasons, the respondent chose to prefer a Special Civil Application under Article 227 of the Constitution and Vaidya, J., entertained the Special Civil Application and granted relief to the respondent casting to the winds the well-settled principle that the High Court does not ordinarily, in exercise of its discretion, entertain a special civil application under Article 227 of the Constitution where an adequate alternative legal remedy is available to the applicant. It is true that this principle is not rigid and inflexible and there can be extraordinary circumstances where despite the existence of an alternative legal remedy, the

High Court may interfere in favour of an applicant, but this was certainly not one of such extraordinary cases. It is indeed difficult to see how the learned Judge could entertain a Special Civil Application against a decree passed by a subordinate court when the procedural law allows an appeal against it and that appeal lies to the High Court itself. It must be realised that the jurisdiction under Article 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked. That apart, it is interesting to note that the order passed by the learned Judge was not an interlocutory order but a final order disposing of the special civil application and by that order the learned Judge did not set aside the decree passed by the City Civil Court, but merely directed stay of its execution pending the disposal of the Small Cause Court suit. It defies one's comprehension as to how such an order could be made by the learned Judge. It is also difficult to see how the learned Judge could give a direction that the decision of the City Civil Court on the issue whether the respondent was a paying guest would not bind the parties in the adjudication of the Small Cause Court suit. The question whether the parties in the Small Cause Court suit would be bound by the decision of the City Civil Court would be a question which would arise for determination in the Small Cause Court suit and the Small Cause Court would have to determine it in deciding the suit before it. If the decision of the Small Cause Court is erroneous, the aggrieved party would have a right to file an appeal against it and the appellate court would then consider this question and adjudicate upon it. But we fail to understand how the learned Judge could, without any decision having been given by the Small Cause Court and such decision having been brought up before him in appeal or revision, enter upon a consideration of this question and pronounce upon it. The order passed by the learned Judge was clearly erroneous and it must be quashed and set aside and the Special Civil Application must be dismissed. We may make it clear that whenever the Small Cause Court hears the suit it will not take into account any

observations made by the learned Judge in the impugned judgment in regard to the question whether the decision of the City Civil Court is binding or not and it will proceed to decide the suit before it in the light of what it considers to be the correct legal position."

19. In PUNJAB NATIONAL BANK Vs. O.C.KRISHNAN & OTHERS {(2001) 6 SUPREME COURT CASES 569}, while dealing with a petition under 227 of the Constitution of India against the order of the Debts Recovery Tribunal, the Hon'ble Supreme Court, observed as under:-

"4. The respondent who was a guarantor and whose property was stated to have been mortgaged filed a petition under Article 227 before the High Court at Calcutta. The High Court allowed the petition by observing that as the mortgaged property was situated in Chennai the Debts Recovery Tribunal had no territorial jurisdiction in respect thereto and it could not have directed sale of mortgaged property. It, accordingly, held that the Bank would be at liberty to proceed against defendant No. 4, respondent herein, in appropriate forum for recovery of debts by sale of mortgaged property. Hence this appeal.

5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this last track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred.

Even though a provision court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

20. In the instant case, the Companies Act, provides for an appeal from the order of the National Company Law Tribunal to the National Company Law Appellate Tribunal. Appeal is both on law and facts. Both can be adjudicated before the Appellate Tribunal.

21. Judgment, relied on by the learned counsel for the petitioner in the case of SURYA DEV RAI Vs. RAM CHANDER RAI AND OTHERS {2003 (6) SCC 675}, cited supra, deals with the exercise of powers under Article 227 in a matter arising out of a suit.

No doubt, the High Court has powers under Article 227 of the Constitution of India to entertain petitions where Courts and Tribunals under the jurisdiction of the High Court have acted in a manner which has resulted in abuse of process of law or where the facts are so gross that if the High Court does not entertain the petition, then it will result in such an injury which cannot be rectified. The learned counsel for the petitioner relied on a Division Bench of this Court in AGD Private Limited, rep. By its Director, Mr.N.Vijaykumar, Coimbatore Vs. Registrar of Companies, Ministry of Corporate Affairs, Coimbatore 641 005 (C.R.P (NPD) No.1476 of 2018, dated 1/10/2018), which arose from proceedings from the National Company Law Tribunal. This Court has observed as under:-

"24. The prayer is to set aside the order made in C.P.No.178 of 2017, dated 09.01.2018. True that there is an alternative remedy under the NCLT Act, 2013, to prefer an appeal to the Tribunal. But when the error is apparent on the face of record, we are of the view that exercise of power under 227 of the Constitution of India is not ousted. Order dated 09.01.2018 has been made on the submission of the petitioner that company has been strike off. Tribunal cannot be found fault with, in placing on record the submission. But the fact remains that, an application under Section 252(3) of the Companies Act, 2013, can be entertained only in a

case, where there is an order by which the company is strick off. Legislation if any enacted, providing for an alternative remedy, cannot take away the Constitutional Powers of the High Courts, under Article 226 or 227 of the Constitution of India. High court in exercise of jurisdiction under Article 226 or 227 of the Constitution of India, may not entertain a writ petition, on the ground of availability of an alternative remedy, but the rule cannot have universal application. It is well settled that despite existence of an alternative remedy, still, High Court in exercise of its jurisdiction, entertain a writ petition and pass suitable orders, if it is found that the authority had not acted in accordance with law.

25. Reference can be made to the decisions in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 1 SCC 1, Sanjana M.Wig (Ms.) v. Hindustan Petroleum Corporation Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarath Ambuja Cement Ltd., and Another (2005) 6 SCC 499.

26. A Hon'ble Division Bench of this Court, in P.Vinmani v. General Manager, State Bank of India, SAM Branch, Anna Salai, Chennai, reported in AIR 2011 Madras 220, at paragraph No.12 of the judgment held thus:-

"It is true that when there is a provision of alternative remedy, which is more effective, the writ petition cannot be entertained unless such a remedy is exhausted. In fact, this law is reiterated by the Apex Court in the judgment reported in the case of (2010) 8 SCC 110 : (AIR 2010 SC 3413) (cited supra). Availing alternative remedy is general Rule, but there are exceptions. In case if the order of the Tribunal is questioned on the ground of want of jurisdiction, the provisions of Article 226 of the Constitution can be invoked and more so, when it is pleaded that the order questioned in this writ petition is a nullity and non-est in law. In this context, we may also refer that when an order of the Tribunal is a nullity, an appeal therefrom cannot be of greater validity and in that sense, the question of directing the parties to prefer an

appeal against that order, which is a nullity, is if no consequence. In the event when the order is void, non-est, relegating a person to avail alternative remedy would result in palpable injustice. In that sense, in the decision reported in the case of Municipal Council v. Kamal Kumar (AIR 1965 SC 1321), the Apex Court has held that the High Court could retain the discretion to interfere in proper cases, even in the case when the impugned order is ultra vires."

27. In Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329, the Hon'ble Supreme Court explained the difference between the scope and exercise of power under Article 226 or 227 of the Constitution of India.

28. Apparently, when there is no order under Sub Section (6) of Section 248 of the Companies Act, 2013, the question is whether the steps taken by the petitioner under Section 252(3), for the reliefs prayed for, have any legs to stand? In such circumstances, whether this Court can strike off the proceedings initiated by the petitioner? or on the facts and circumstances, exercise of its supervisory jurisdiction, mould the relief prayed for and pass appropriate orders. Let us consider few decisions on the power of the Court to mould the relief and issue directions,
(i) In Pasupuleti Venkateswarlu v. The Motor & General Traders reported in 1975 (1) SCC 770, at Paragraph 4, the Hon'ble Apex Court held as follows:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis a vis circumstances which come into being Subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of

moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(ii) In Hindalco Industries Ltd., v. Union of India reported in 1994 (2) SCC 594, the Hon'ble Supreme Court, at paragraph 7, held as follows:

"7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of

discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same, But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes 'may refuse' the relief. It is one of exercising judicious discretion by the court. Same consideration would apply to the causes under the Act and the Tribunal has such discretion. The Tribunal, while keeping justice, equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into consideration, would mould the relief, in exercising its discretionary power and equally would avoid injustice. Likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, may either grant the relief or refuse to grant the same. It would be one of just and equitable exercise of the discretion in moulding the ancillary relief. It is not as of right. In 'Associated Provincial Picture Houses Ltd. case' under Sunday Entertainments Act, 1932, the licensing authority while granting permission to exhibit cinematographs, imposed certain conditions, prohibiting the children under age of 15 years to be admitted in the theatre. It was challenged as being arbitrary. Dealing with the discretionary power of the licensing authority, the Court of Appeal held that the law recognised certain principles on which discretion must be exercised but within the four corners of those principles. The discretion is not absolute one. The exercise of such a discretion must be a real exercise of the discretion. If in any statute conferring the jurisdiction, there are to be found, expressly or by implication, matters to which the authorities exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that

certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty - those, of course, stand by themselves, unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably."

29. In the case on hand, on the premise that there is an order, striking off the company from the register of companies, the petitioner has filed an application under Section 252(3) of the Companies Act, 2013, and orders have been passed in C.P.No.178 of 2017, dated 09.01.2018, which is impugned in this revision petition. But this Court on perusal of files, has found that there is no order under Section 246(6) of the Act, at all. By inadvertence the petitioner company, was of the view that, there was an order under Section 248(6), of the Companies Act, 2013, and proceeded further whether this Court is denuded of the power under Article 227 of the Constitution of India, to ignore the fundamental error committed by the Registrar of Companies, and direct the petitioner to avail the alternate remedy under Section 252(3) of the Companies Act, 2013, which admittedly, not availed by the petitioner, on the premise that there was an order under Section 248(6) of the Companies Act, 2015.

30. Going through the material on record and files, we are of the view that when there is no order under Section 248(6) of the Companies Act, 2015, passed by the Registrar of Companies, the consequential publication effected under Section 248(5), is not valid."

22. In the said judgment, the Hon'ble Division Bench has placed reliance on AIR 1952 All.788 (Jodhey Vs. State), wherein the Allahabad High Court had very succinctly brought out the

jurisdiction under Article 227 of the Constitution of India.

23. Judgment in C.R.P.(NPD) No.1476 of 2018, dealt with the case, wherein orders, under Section 248 (5) of the Companies Act were passed by the Registrar of Companies, removing the name of the Company from the register, without passing an order under Section 248 (6) of the Act. That was a case wherein it was brought to the notice of this Court that Registrar of Companies struck off the names of the Companies, without passing any order, under Section 248 (6) of the Act. This practise was sought to be rectified by exercising the powers under Article 227 of the Constitution of India. Such is not the scenario here. Efficacious alternate remedy is available to the petitioner, by challenging the order before the National Company Law Tribunal. Petitioner, if so advised can approach before the National Company Law Appellate Tribunal, by filing an appropriate appeal. It is needless to say that National Company Law Appellate Tribunal may entertain an appeal, even after the expiry of the said period applying Section 14 of the Limitation Act, 1963.

24. Needless to observe that we have not gone in to the merits of the case. In the result, Civil Revision Petition is not maintainable and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs/gsp

After the pronouncement of the orders, placing reliance on a decision in Reserve Bank of India Vs. M/s. Integrated Finance Company Ltd., reported in 2008-3-L.W.267 and in particular, to paragraph No.39, Mr.V.Prakash, learned Senior Counsel submitted that till the revision petitioner, moves the National Company Law Appellate Tribunal, interim order made in CA No.12 of 2016 in C.P.No.2 of 2016 dated 18.11.2016, on the file of the National Company Law Tribunal, Chennai, impugned in CRP No.3739 of 2016, be stayed for atleast for a period of two weeks.

2. Mr.G.Vasudevan, learned counsel for the 1st respondent submitted that Hon'ble Mr.Justice K.Sampath (Retd), appointed as Chairman, expired and therefore, it requires some time to carry out the directions in the interim order. Submission is placed on record.

3. In the instant case, in the penultimate paragraph of the judgment, while granting liberty to the revision petitioner to move the National Company Law Appellate Tribunal, we observed that Section 14 of the Limitation Act, could be invoked for condonation.

4. As we have already held that an alternative and efficacious remedy is available and not delved into the merits of the dispute, we are not inclined to accede to the request of the learned senior counsel for the revision petitioner to stay the order impugned in the Revision Petition.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The National Company Law Tribunal Bench at Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104 (2 copies)

+4cc to M/s.Adrian D.Rozario, Advocate, S.R.No.88702

+2cc to Mr.A.Immanuel, Advocate, S.R.No.88801

+5cc to Mr.G.Vasudevan, Advocate, S.R.No.88681

C.R.P.No.3739 of 2016

KK(CO)
CS/21/12/2018



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