

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 23.10.2018****Order Delivered On 09.04.2019****WPC No. 5668 of 2008**

1. Smt. Poonam Mishra W/o Shri N.K. Mishra, Aged About 64 Years, Agriculturist, R/o Opposite Traffic Police Station, Link Road, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Collector, Bilaspur Chhattisgarh.

2. Shri Manohar Rao Tamaskar (dead) through LRs

2.1 - Smt. Shailja Tamaskar, W/o Late Manohar Krishna Rao Tamaskar, Aged About 82 Years, Housewife, R/o Near Konher Park, Tilak Nagar, Bilaspur (C.G.)

2.2 - Dr. Shailendra Tamaskar, S/o Late Manohar Krishna Rao Tamaskar, Aged About 61 Years, R/o S.R.M. Medical College, Medical Sector, Cothari, Post Office- Kattam, Kulathur, Chennai (Tamilnadu).

2.3 - Shri Mahesh Tamaskar S/o Late Manohar Krishna Rao Tamaskar, aged about 58 years, Bank employee, R/o House No. J-6, Parijaat Colony, Nehru Nagar, Ameri Road, Bilaspur (C.G.)

2.4 – Smt. Shyamla Tamne W/o Dr. Ravindra Tamne, aged about 55 years, C/o Smt. Shailja Tamaskar, Near Konher Park, Tilak Nagar, Bilaspur (C.G.)

2.5 – Shri Shyam Tamaskar, S/o Late Manohar Krishna Rao Tamaskar, aged about 45 years, Bank employee, R/o Quarter No. 94 2B, Street 19, Sector 4, Bhilai Nagar, Durg (C.G.)

3. Shri Bhupendra Rao Tamaskar, S/o Krishna Rao Tamaskar, Aged About 67 Years, R/o Tilak Nagar, Bilaspur Chhattisgarh.

---- Respondents

For Petitioner Shri U.N. Awasthy, Senior Advocate with
 Ms. Raksha Awasthy, Advocate

For State/Respondent Shri Sameer Behar, Panel Lawyer

For Respondent No.2 Shri Anil S. Pandey, Advocate

C A V Order

By

Prashant Kumar Mishra, Ag. CJ

1. In this petition under Article 226 of the Constitution of India the petitioner would challenge the legality, validity and correctness of the impugned judgment and decree dated 8-10-2001 passed by the 8th Civil Judge Class – II, Bilaspur, in civil suit No.27-A/98 and the judgment and decree dated 28-2-2005 passed by the 4th Additional District Judge, Bilaspur, in civil appeal No.4-A/2002.
2. This petition was heard on 23-10-2018 on the question of maintainability of the writ petition.
3. Learned senior counsel appearing for the petitioner would refer to the decisions rendered by the Supreme Court in **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v Chandran and Others¹**, **M/s Estralla Rubber v Dass Estate (Pvt.) Ltd.²** and **M/s Pepsi Foods Ltd. and another v Special Judicial Magistrate and**

¹ AIR 2017 SC 1034

² AIR 2001 SC 3295

Others³, to argue that there is no bar for this Court to examine the legality and validity of the judgment and decree of a civil Court in exercise of powers under Article 226 of the Constitution of India.

4. The issue is no longer *res integra* and should not detain this Court for long in view of the law settled by the Supreme Court in **Radhey Shyam and Another v Chhabi Nath and Others** wherein the Court observed thus in paras 25 to 27 :

25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of

superintendence under Article 227 is constitutional. The expression “inferior court” is not referable to the judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

26. The Bench in *Surya Dev Rai* also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including *Waryam Singh v. Amarnath*, *Ouseph Mathai v. M. Abdul Khadir*, *Shalini Shyam Shetty v. Rajendra Shankar Patil* and *Sameer Suresh Gupta v. Rahul Kumar Agarwal*. In *Shalini Shyam Shetty* this Court observed: (SCC p. 352, paras 64-67)

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of

statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis supplied)

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private

person not discharging any public duty. Scope of Article 227 is different from Article 226.

5. Referring to **Radhey Shyam** (supra) the Supreme Court in a recent case i.e. in **Ram Kishan Fauji v State of Haryana and Others**⁴ held thus :

38. In the ultimate eventuate, the three-Judge Bench answered the reference as follows : (Radhey shyam case, SCC p.449, para 29)

“29.1 Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2 Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3 Contrary view in Surya Dev Rai is overruled.”

6. In view of the above, the present petition, challenging the legality and validity of the judgment and decree passed by the jurisdictional civil Court, is not maintainable.
7. As an upshot, the writ petition is dismissed as not maintainable.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Gowri

4 (2017) 5 SCC 533