

Ms Priyanka B. Chavan for Petitioners.
Dr. Suneet Gupta for Respondents.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 20.07.2015 passed by the Competent Authority, Konkan Division, Mumbai under the Maharashtra Rent Control Act (for short 'Competent Authority') in Case No.96 of 2012. By that order, the Competent Authority dismissed Case No.96 of 2012 filed by the petitioners under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') in default. The petitioners have also challenged the order dated 22.10.2018 passed by the Competent Authority dismissing the application for condonation of delay in filing the application for restoration of eviction petition. Initially, Writ Petition was filed challenging the order dated 22.10.2018 passed by the Competent Authority. The Petition was heard on 15.03.2019. As the Petition was pending for admission, leave to amend so as to challenge the order dated 20.07.2015 was granted. The matter was thereafter heard on 28.03.2019. Notice was issued to the respondents for final disposal of Writ Petition. It was also made clear that despite service if respondents fail to appear, the Court will proceed

to decide the Petition on its own merits. The Petition was thereafter heard on 30.04.2019. At the request of Dr. Gupta, it was adjourned till today so as to enable the respondents to file reply. Accordingly, reply is filed on behalf of the respondents. The parties were put to notice that subject to the time constraint and convenience of the Court, Petition will be disposed of finally on that date. The parties were also asked to address this Court as to why the Court should not exercise the powers under Article 227 of the Constitution of India in the light of the decision of the Apex Court in *Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675.

3. Rule. In view of the orders dated 28.03.2019 and 30.04.2019, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The petitioners have instituted proceedings under Section 24 of the Act against the respondents for recovery of possession of Pent House No.504, Dil Bahar Co-op. Hsg. Soc. Ltd., 5th floor, plot No.45, Sector 29, Vashi, Navi Mumbai (for short 'suit premises'). The proceedings filed by the petitioners under Section 24 was dismissed in default on 20.07.2015. On 30.10.2015, the petitioners filed application for setting aside that order. According to the petitioners, though the application for restoration was filed, the said application was not disposed of. Petitioners, therefore, instituted Writ Petition No.10701 of 2016 in this Court. By order dated 16.03.2017, this Court directed the Competent Authority to pass appropriate order on the application for restoration. It appears that petitioners filed application dated 03.04.2017 requesting the Competent Authority to hear the restoration application. On 10.01.2018, the Competent Authority rejected the applications dated 30.10.2015 and 03.04.2017 and gave liberty to them to file appropriate application in

proper format.

5. In view of the order dated 10.01.2018, the petitioners filed Miscellaneous Application dated 26.04.2018 for condoning the delay and restoration of Case No.96 of 2012 by setting aside order dated 20.07.2015. Writ Petition No.10701 of 2016 was disposed of on 06.06.2018 directing the Competent Authority to decide the fresh application filed by the petitioners for setting aside order dated 20.07.2015 and for restoration of Case No.96 of 2012, within four weeks from production of the authenticated copy of the order, if not already disposed of. Eventually, by order dated 22.10.2018, the Competent Authority rejected the application for condonation of delay. It is against the orders dated 20.07.2015 and 22.10.2018 passed by the Competent Authority, petitioners have instituted the present Petition.

6. In support of this Petition, Ms Chavan strenuously contended that the Competent Authority ought to have condoned the delay in filing the application for restoration. She submitted that in view of the decision of ***Prakash H. Jain Vs. Marie Fernandes, AIR 2003 SC 4591***, if this Court comes to the conclusion that Competent Authority has no power to condone the delay, in that event, the order dated 20.07.2015 may be set aside by exercising powers under Article 227 of the Constitution of India thereby restoring Case No.96 of 2012. She submitted that no prejudice will be caused to the respondents in case Case No.96 of 2012 is restored. In any case, petitioners being the licensors and respondents were inducted in the suit premises as licensees, after the expiry of the leave and licence agreement, petitioners can certainly file fresh proceedings under Section 24 of the Act. She relied upon the decision in ***Surya Dev Rai (supra)*** to contend that this is eminent case for exercising power under Article 227 of the Constitution of India.

7. On the other hand, Dr. Gupta strenuously opposed the Petition. He submitted that this is not a fit case for interfering with the impugned orders as the petitioners have not approached the Court with clean hands. He submitted that the contention of the petitioners that the notice dated 08.01.2015 issued by the office of the Competent Authority fixing date of hearing on 21.01.2015 was not received by them is patently false. The petitioners relied upon the track report at page 128, which is to the effect that “consignment not found”. He submitted that the track report at page 128 will not disclose the delivery of the article after lapse of 3 years. He invited my attention to the track report in respect of article EM885151252IN. That article was booked on 02.03.2016 and the item was delivered on 07.03.2016. In respect of the said item, query was made as to whether the consignment was delivered and the response of the Postal Department was that consignment details are not found. He, therefore, submitted that the contention of the petitioners that they were not served with the notice dated 08.01.2015 fixing the date of hearing on 21.01.2015 is patently false. As the on-line track report relied by the petitioners is misleading, it is necessary to call for R&P of the case from the Competent Authority. Thus, the petitioners have not approached this Court with clean hands.

8. He further submitted that the present Petition is prosecuted by the petitioner No.1, who is a widow and petitioners No.2 and 3, who are major sons of the petitioner No.1. He submitted that it is not clear from the application dated 30.10.2015 as to whether it was made by the petitioner No.1 in person or it was made through Advocate. He further submitted that though the petitioners have challenged the order dated 20.07.2015 in this Court, in the entire Petition, no sufficient cause is made out for condoning the delay in filing the Petition challenging the said order.

9. Dr. Gupta submitted that petitioners have made false statements in the Petition and have made misrepresentation. In support of his submissions, he has invited my attention to the following paragraphs of the Petition as also page 43 of the Petition:

“3(iv) The petitioners submit that by way of a Financial Assistance from M/s. LIC Housing Finance Limited, the petitioner No.1 along with the late Shri Sanjay Govind Kolhatkar had created a charge on the licensed / suit property, with the above-said financiers. That the said housing loan was for a period of 10 years commencing 1999. Petitioners and the late Shri Sanjay Govind Kolhatkar had jointly decided to give on, what is prominently known as Leave and Licence, the said licensed / suit property for a security deposit of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) and a monthly rent of Rs.15,000/- (Rupees Fifteen Thousand only). Petitioner No.1 being a qualified Masters in Science assisted her deceased husband in his day to day activities since the loan was on the joint names, the present respondent No.1 and 2 had an interest in the licensed / suit property, and hence entered into the leave and licence agreement dated 17.11.2001, which ended on 16.10.2002. The late Shri Sanjay Govind Kolhatkar had however executed the said agreement as a witness. That a certain term in the agreement recorded Rs.2000/- as compensation / damages per day for not vacating and handing over the licensed / suit property. Respondents No.1 and 2 never vacated the licensed / suit property and the respondent No.1 by way of a leave and licence agreement bearing TNN-8/616/2008 were permitted to continue in the occupation upon payment of Rs.20,000/- as monthly compensation and the same was to be paid to M/s. LIC Housing Finance Limited dated 25.01.2008. Annexed hereto and marked 'Exhibit-A' the copy of the leave and licence agreement bearing TNN-8/616/2008 dated 25th January, 2008.

v) The petitioners submit that the respondent No.1 and 2 enjoyed the licensed / suit property till the end of the licensed period 30th November 2008, and was further in unlawful occupation of the licensed / suit property from 01st December 2008 till date. Respondents No.1 and 2 failed to pay the monthly compensation regularly, and hence on 09th May 2008, the petitioner No.1 in writing demanded vacant possession for violation of the terms of the Agreement. Annexed hereto and marked 'Exhibit-B' the copy of the statement showing dishonored cheques of the respondent No.1. That the respondent No.1 however started and made payments of the

monthly compensation along with interest, as payable to the petitioner, to the LIC Housing Finance Ltd. till July 2010. That the respondent No.1 and 2 never paid any increases in rent and on the contrary had also defaulted in paying of the monthly compensation in time.”

10. He submitted that in paragraph 3(iv), it is contended that petitioner No.1 and late Shri Sanjay Govind Kolhatkar had jointly decided to give on, what is prominently known as leave and licence, the suit property for a security deposit of Rs.1,50,000/- and a monthly rent of Rs.15,000/-. It was further contended that respondents were permitted to occupy the suit premises upon payment of Rs.20,000/- as monthly compensation. The same was to be paid to M/s. LIC Housing Finance Limited. The petitioners enclosed leave and licence agreement dated 25.01.2008 at Exhibit 'A'. In paragraph 3(v), petitioners alleged that respondents No.1 and 2 failed to pay monthly compensation regularly and hence on 09.05.2008, petitioner No.1 in writing demanded vacant possession for violation of the terms of the agreement. A copy of the statement showing dishonoured cheques of the respondent No.1 was annexed at exhibit-B (page 43). He submitted that whereas the statement at exhibit-43 shows that cheques were issued between 29.09.2007 and 11.01.2008 amounting to Rs.10,00,000/- in aggregate, the leave and licence agreement itself was entered into on 25.01.2008. In short, he submitted that the cheques allegedly dishonoured were prior in point of time of leave and licence agreement dated 25.01.2008. He submitted that as the petitioners have approached this Court with unclean hands, no case is made out for interfering with the impugned orders.

11. He further submitted that on 09.05.2008, F.I.R. is lodged against the petitioners for committing forgery. The petitioners have instituted Writ Petition in this Court challenging the order of issuing process and the said Petition is pending. He further submitted that from exhibits - C

and I, it is evident that petitioners were duly represented by the Advocate. Neither the petitioners nor their Advocates appeared on several occasions before the Competent Authority. The Competent Authority was, therefore, justified in dismissing the proceedings under Section 24 of the Act in default.

12. Dr. Gupta further submitted that aggrieved by the order of 20.07.2015, petitioners ought to have exhausted alternate remedy by filing Revision under Section 44 of the Act before the Commissioner. As the petitioners have equally efficacious alternate statutory remedy, this Court will decline to exercise powers under Article 227 of the Constitution of India. He relied upon the following decisions to contend that no case is made out for interfering with the impugned orders under Article 227 of the Constitution of India:

- a. ***Radhey Shyam Vs. Chhabi Nath*, (2009) 5 SCC 616**, and in particular paragraph 22 where the Apex Court extracted paragraph 64 of *Shalini Shyam Shetty Vs. Rajendra Shankar Patil*, **2010 (8) SCC 329**;
- b. ***Shalini Shyam Shetty* (*supra*)**, and in particular paragraphs 62 (b), (c), (k) and (n) and 78;
- c. ***Mostt. Simrikhia Vs. Dolley Mukherjee*, AIR 1990 SC 1605** to contend that inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Statute;
- d. ***Sadhana Lodh Vs. National Insurance Company Limited*, (2003) 3 SCC 524** to contend that right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution of India. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution of India.

13. He also relied upon the decision in **Naranji Bhimji Family Trust Vs. Additional Commissioner and two others in Writ Petition No.5014 of 2014** decided by this Court (Coram : R. K. Deshpande, J.) on **11.02.2015**, and in particular paragraph 5 thereof to contend that the Revisional Authority acting under Section 44 of Chapter VIII of the Act, would also not be a 'Court', competent to invoke the powers under Section 5 or Section 14 of the Limitation Act, 1963. In the absence of there being any power conferred upon the Revisional Authority under Section 44 of the Act, to condone the delay beyond the period of 90 days, the order passed by the Authority condoning the delay was without jurisdiction. Merely because this Court has directed the concerned authority to consider the case of the petitioner sympathetically, would not confer jurisdiction upon such authority to condone the delay, if it has no such jurisdiction in law.

14. Dr. Gupta submitted that thus even if this Court directs the Competent Authority to deal with the application for condonation of delay sympathetically, it cannot entertain that application because it has no power to condone the delay. For all these reasons, he submitted that no case is made out for interfering with the impugned orders.

15. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, petitioners have instituted proceedings under Section 24 of the Act on the basis of leave and licence agreement dated 25.01.2008. A perusal of that agreement prima facie shows that it is a registered document. Under that agreement, Sanjay Kolhatkar, husband of petitioner No.1 and father of petitioners No.2 and 3 inducted respondent No.1 herein as a licensee in the suit premises. The licence

was given for the period from 01.01.2008 for a period of 11 months expiring on 30.11.2008 on payment of licence fee of Rs.20,000/- per month. As the respondent No.1 did not handover possession of the suit premises, Application No.96 of 2012 was filed by the petitioners on or about 04.10.2012. After service of summons, respondents filed leave to defend application in or about January 2013. Replies were filed by the parties. By order dated 31.05.2014, the Competent Authority rejected the application for leave to defend. By order dated 31.05.2014, the Competent Authority allowed the application under Section 24 of the Act and directed the respondents to handover possession of the suit premises. They were also directed to pay Rs.40,000/- per month from August 2010 till vacant possession of the suit premises is delivered to the petitioners.

16. Aggrieved by this decision, respondents preferred Revision Application under Section 44 of the Act before the Commissioner. By order dated 07.10.2014, the Additional Commissioner partly allowed the Revision Application and set aside the order dated 31.05.2014 and remitted the case to the Competent Authority for fresh disposal after permitting parties to adduce oral and documentary evidence and then pass final order as per law. It appears that petitioners instituted Writ Petition some time in March, 2015 challenging the order passed by the Commissioner. Ms Chavan states that by that time the order of remand was implemented, and therefore, Petition was rendered infructuous. Be that as it may, by order dated 20.07.2015, the Competent Authority dismissed the application in default after noting that notice was issued to the parties fixing date of hearing on 21.01.2015. The matter was thereafter kept for hearing on 11.03.2015, 10.04.2015, 24.04.2015, 19.06.2015 and 17.07.2015. As the petitioners remained absent, the Competent Authority dismissed the application in default.

17. On 30.10.2015, petitioner No.1 filed application, which reads thus,

“My humble request to the Hon'ble Judge is to give me an opportunity to present myself in the matter of Case No.96 of 2012. Kindly restore the Case No.96 of 2012 and SET ASIDE ORDER dated 20/07/2015 and give me a date for me to reappear in front of the Hon'ble Court.

I shall be extremely grateful if given an opportunity to plead in the above Case No.96 of 2012.”

18. A perusal of this Application shows that petitioner No.1 simply prayed for setting aside the order dated 20.07.2015 thereby restoring Case No.96 of 2012. Petitioner No.1 did not pray for condoning the delay in filing the application. No reason was given justifying absence of petitioners and their Advocate on 21.01.2015, 11.03.2015, 10.04.2015, 24.04.2015, 19.06.2015 and 17.07.2015.

19. As mentioned earlier, petitioners filed Writ Petition No.10701 of 2016 in this Court inter alia contending that though application for restoration was filed before the Competent Authority, no order was passed thereon. This Court permitted the petitioners to point out this position to the Competent Authority in case the Competent Authority is not aware that such an application is pending. If the application was pending, the Competent Authority was directed to pass an appropriate order on the same. The petitioners thereafter filed another application on 03.04.2017 requesting the Competent Authority to keep the matter on any date before 26.04.2017 for hearing on the restoration application. By order dated 10.01.2018, the Competent Authority rejected the applications dated 30.10.2015 and 03.04.2017. In paragraph 7, the Competent Authority noted that petitioner No.1 filed unaffirmed application. Other co-applicant did not come before the Authority with any such application or that they have not authorized the petitioner No.1

on their behalf.

20. The Competent Authority gave liberty to the petitioners to file appropriate application in the proper format. In pursuance of that liberty, petitioners filed application dated 26.04.2018 for condoning the delay of 75 days in filing the said restoration application and for hearing Application No.96 of 2012 on merits by setting aside order dated 20.07.2015. By order dated 06.06.2018, this Court disposed of Writ Petition No.10701 of 2016 by directing the Competent Authority to dispose of the fresh application. In pursuance thereof, by order dated 22.10.2018, the Competent Authority has rejected the application. The Competent Authority has referred to the decision of the Apex Court in the case of **Prakash Jain** (*supra*) and held that the Competent Authority has no power to condone the delay. The application for restoration is not maintainable.

21. In the case of **Surya Dev Rai** (*supra*), the Apex Court has exhaustively dealt with the scope of Article 227 of the Constitution of India. In paragraph 22, the Apex Court observed that “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.

(emphasis supplied)”

22. In paragraph 24, the Apex Court observed that “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.”

23. In paragraph 25, the Apex Court observed that “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.”

24. In paragraph 26, the Apex Court observed that 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. It was also held that where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

25. In paragraph 32, the Apex Court referred to the decision in ***State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru, (2003) 6 SCC 641***. In that case, the Apex Court held that the jurisdiction under Article 227 cannot be limited or fettered by an Act of the State Legislature. The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order. In paragraph 38, the Apex Court summed up the conclusions in a nutshell as under:

“(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.”

26. It was thereafter observed that though the Court has laid 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. It was further observed that there may be cases where 'a stitch in time would save nine'. At the end, the Apex Court observed 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.

27. Dr. Gupta relied upon the decisions in **Radhey Shyam** (*supra*), **Shalini Shyam Shetty** (*supra*), **Mostt. Simrikhia** (*supra*), **Sadhana Lodh** (*supra*) and **Naranji Bhimji Family Trust** (*supra*).

28. In the case of **Radhey Shyam** (*supra*), the question that fell for consideration was whether the view taken in **Surya Dev Rai** (*supra*) that a writ lies under Article 226 of the Constitution of India against the order of the Civil Court is the correct view or not. In paragraph 25 of **Surya Dev Rai**, it was observed that distinction between Article 226 and 227 stood almost obliterated. In paragraph 22, the Apex Court extracted paragraph 64 of **Shalini Shyam Shetty** (*supra*). In paragraph 25 of the report, the Apex Court answered the question by holding that - (i) judicial orders of Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India, and (ii) jurisdiction under Article 227 is distinguished from jurisdiction under Article 226. Contrary view in **Surya Dev Rai** (*supra*) was overruled.

29. In so far as the decision in **Shalini Shyam Shetty** (*supra*) is concerned, appeal was filed before the Apex Court by the original

defendant challenging the judgment and order dated 09.02.2019 of the Bombay High Court rendered in Writ Petition filed under Article 226 of the Constitution of India. The respondent-plaintiff had instituted suit for eviction on several grounds under the Maharashtra Rent Control Act, 1999. The learned trial Judge decreed the Suit. By order dated 11.09.2008, the first Appellate Court partly allowed the appeal. The trial Court's judgment was confirmed on the ground of causing waste and damage as contemplated under Section 16(1)(a) of the Act. The findings of the trial Court on the ground of nuisance and annoyance were set aside. The appellants then moved the High Court with a prayer to issue a writ of certiorari and/or any other writ, order or command. The High Court dismissed the Writ Petition only on the ground that against concurrent finding of facts by the Courts below, the exercise of writ jurisdiction is not warranted. It is in that context, the Apex Court observed in paragraph 15 that in a pure dispute of landlord and tenant between private parties, a writ petition was entertained by the High Court. The Apex Court examined whether the Writ Petition filed before the High Court was under Article 226 of the Constitution of India or not. In paragraph 18, it was observed that in paragraph 6 of Writ Petition, it was categorically stated that the present Petition was filed under Article 226 of the Constitution of India. In paragraphs 61 and 62, it was observed thus,

“61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim

it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the

bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and

judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

30. Dr. Gupta relied upon clauses (b), (c), (k) and (n) of paragraph 62 extracted hereinabove as also paragraph 78. In my opinion, this decision does not take contrary view than the view taken in **Surya Dev Rai's case** (supra) while dealing with the scope of High Court's power under Article 227 of the Constitution of India. In fact this decision reiterates that power of superintendence under Article 227 is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu. Power under Article 227 is reserve and exceptional power of judicial intervention. It is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest. The power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. In paragraph 78, it was observed that in some cases High Courts, **in a routine manner**, entertain petition under Article 227 over disputes relating to- (i) partition suits, (ii) execution of decree, (iii) landlord and

tenant and (iv) money decree. In my opinion, decisions in **Radhey Shyam** (*supra*) and **Shalini Shyam Shetty** (*supra*) do not assist the respondents.

31. Dr. Gupta relied upon decision in **Mostt. Simrikhia** (*supra*) where it is held that inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Statute. The proposition is well settled and cannot be disputed. The decision is however, not applicable to the facts of the present case.

32. Dr. Gupta also relied upon decision in **Sadhana Lodh** (*supra*) to contend that right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution of India. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution of India. The proposition is well settled and cannot be disputed. The said decision is however, not applicable to the facts of the present case as basically, the Competent Authority rejected the application for restoration on the ground that it has no power to condone the delay. In view of the decision of **Prakash Jain** (*supra*), it cannot be said that the Competent Authority has the power to condone the delay. It is, therefore, necessary to exercise power under Article 227 of the Constitution of India by setting aside order dated 20.07.2015 thereby restoring case filed by the petitioners under Section 24 of the Act.

33. Dr. Gupta relied upon the decision in **Naranji Bhimji Family Trust** (*supra*). In the said decision, the learned Single Judge held that the Revisional Authority under Section 44 has no power to condone the delay. In paragraph 54, the learned Single Judge referred to the decision

in **Prakash Jain** (*supra*). In view thereof, I do not find that the said decision advances the case of the respondents. The submission of Dr.Gupta that petitioners should have filed revision cannot be accepted as the Revisional Authority has no power to condone the delay.

34. Basically, the respondents have not substantiated that any prejudice will be caused to them in case the order dated 20.07.2015 is set aside thereby restoring proceedings filed by the petitioners under Section 24 of the Act. It is also material to note that even if the proceedings under Section 24 of the Act filed by the petitioners are not restored, nonetheless, law does not preclude them from filing fresh proceedings for recovering possession. As the earlier proceeding was dismissed in default on 20.07.2015 and not on merits, the fresh proceeding will not be barred by *res judicata*. Dr. Gupta undoubtedly contended that fresh proceedings will be barred by limitation. However, no provision either of the Act or Limitation Act is pointed out to substantiate this contention. It is not in dispute that registered leave and licence agreement was executed on 25.01.2018 for a period of 11 months commencing from 01.01.2018 and expiring on 30.11.2018. In view thereof, I do not find any merit in this submission. The fact remains that respondents were inducted in the suit premises on the basis of registered leave and licence agreement and the period of licence expired on 30.11.2018. In view of the decision of the Apex Court in the case of **Surya Dev Rai** (*supra*), in my opinion, this is an appropriate case where “*a stitch in time would save nine*” maxim is applicable. In view thereof, this is a fit case for exercising powers under Article 227 of the Constitution of India. Hence, Petition succeeds. Impugned orders dated 20.07.2015 and 22.10.2018 passed by the Competent Authority are set aside. Case No.96 of 2012 filed by the petitioners before the Competent Authority is restored to its original position. The Competent Authority will proceed with the matter in accordance with law from the

stage at which it was dismissed in default. All contentions of the parties on merits are expressly kept open. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab