



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.08.2019
DELIEVRED ON : 27.09.2019

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THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.1363 of 2019
and
CMP (MD) .No.7319 of 2019

Latha Ilangovan ... Petitioner/
3rd respondent / 3rd defendant
Vs.

1.Usha Rajaram ... 1st respondent/
Petitioner / Plaintiff

2.Sarulochana Kripanidhi

3.Shanthy Sivakumar ... Respondents 2 & 3/
Respondents 1 & 2 / Defendants 1 & 2

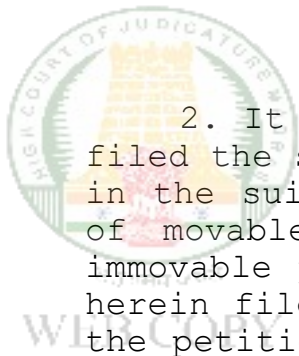
PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 12.07.2019, passed in I.A.No.173 of 2019 in O.S.No.60 of 2019 by the learned Principal District Court, Thoothukudi.

For petitioner : Mr.Isaac Mohanlal,
Senior Counsel for
Mr.K.Muthu Ganesa Pandian

For first respondent : Mr.M.Ajmal Khan,
Senior Counsel for
Mr.S.Joel

ORDER

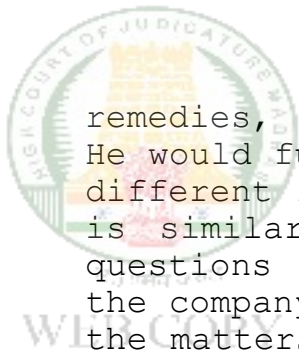
This Civil Revision Petition has been filed by the petitioner/3rd defendant in the suit challenging the order dated 12.07.2019 passed in I.A.No.173 of 2019 in O.S.No.60 of 2019, whereby and whereunder the Court below has granted an interim order of injunction till 14.08.2019 and then, ordered notice to the petitioner/3rd defendant herein as well as 2nd and 3rd respondents herein/defendants 1 and 2.



2. It is seen that the first respondent herein as plaintiff has filed the suit in O.S.No.60 of 2019 for partition of her 5/16 shares in the suit schedule properties. The suit properties are comprised of movable (40 - Tractor Lorries and 23 - Tarus Lorries) and immovable properties. Along with the plaint, the first respondent herein filed I.A.No.173 of 2019 for interim injunction stating that the petitioner and the respondents 2 and 3 are trying to sell away the suit schedule properties and to create encumbrance over the same. The trial Court has granted interim injunction till 14.08.2019 stating that *prima facie* case made out and balance of convenience is in favour of the first respondent/plaintiff and thereafter, ordered notice. Aggrieved by the same, the petitioner/3rd defendant in the suit filed this petition.

3. The learned senior counsel appearing for the petitioner/3rd defendant submitted that the suit properties are belonging to the Private Limited Company - M/s.Diamond Shipping Agencies Pvt. Ltd., at Tuticorin. The first respondent/plaintiff has already filed a Company Petition No.555 of 2019 before the National Company Law Tribunal, Chennai, in respect of the same properties, in which the first respondent/plaintiff has prayed for interim relief of injunction restraining the respondents 2 to 4 therein from alienating the movable and immovable assets of the company and creating any further charge or encumbrance over same. Since the interim order was refused by the Tribunal, the first respondent/plaintiff, suppressing the above refusal by the Tribunal, has filed the suit in respect of the same properties seeking similar relief of injunction indirectly without impleading the above Company. As the National Company Law Tribunal, Chennai, has already seized of the matter, there cannot be a parallel proceeding by way of suit. There is a legal bar of Civil jurisdiction against the trial Court by virtue of Section 430 of the Companies Act, 2013 and hence, the trial Court has no jurisdiction to grant interim order of injunction, which was denied by the Tribunal. He would further submit that Order 39 Rule 3 of C.P.C. mandates that when the Court proposes to grant an interim order of injunction without notice, the Court shall record reasons for its opinion that the object of granting injunction would be defeated by delay. In this case, the trial Court has failed to record any valid reasons for grant of *exparte* interim injunction and hence, the interim order passed by the trial Court may be set aside. He would further submit that though there is an alternative remedy, this Civil Revision petition is maintainable, as the trial Court has passed the interim order in violation of the statutory requirements of Order 39 Rule 3 of C.P.C. Thus, he prayed to allow this revision petition.

4. The learned senior counsel appearing for the contesting first respondent/plaintiff submitted that as against the impugned order, the petitioner can file appeal under Order 43 Rule 1 of C.P.C. or he can file vacate stay petition. As there is alternative



remedies, this Civil Revision Petition is not at all maintainable. He would further submit that the Company Petition has been filed for different reliefs, though the interim relief was sought for therein is similar to the relief sought for in I.A.No.173 of 2019. The questions as to whether the similar relief has been sought for in the company petition and whether the suit is maintainable or not are the matters to be decided in the suit after trial. He would further submit that the trial Court, after recording reasons as per Order 39 Rule 3 of C.P.C. has granted interim relief of injunction till 14.08.2019. While granting interim order, the trial Court has recorded that there is a *prima facie* case in favour of the first respondent/plaintiff and that the balance of convenience is in favour of the first respondent/plaintiff. The trial Court has further recorded that considering the nature of the properties, if the same is alienated, it will cause irretrievable injury to the first respondent/plaintiff. He would further submit that as the trial Court has granted only limited stay, the petitioner could very well appear before the trial Court and oppose the extension of interim order or he could very well file appeal or vacate stay petition. Therefore, the impugned order does not warrant interference of this Court, that too under Article 227 of the Constitution of India.

5. Considering the submission of the learned counsel for the petitioner/3rd defendant that the respondents 2 and 3 are only formal parties in this petition, notice to the respondents 2 and 3 are dispensed with.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Though very many contentions have been raised by the learned senior counsel appearing for both sides with regard to the merits and demerits of the suit, this Court is not inclined to go into the same as the scope of this Court in this case is very limited.

8. The issues to be decided in this case are:

(a) Whether the Civil Revision Petition under Article 227 of the Constitution of India can be entertained against an *ex parte* interim order, when there are effective alternative remedies?

(b) Whether there is any statutory violation in passing the impugned order?

9. The Hon'ble Supreme Court in the decision in **Surya Dev Rai Vs. Ram Chander Rai and others**, reported in **2003 (6) SCC 675** considered the nature of jurisdiction under Article 227 of the Constitution of India with reference to the decided cases and held as follows :

"22. Article 227 of the Constitution confers on every High Court the power of superintendence



over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the



proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, 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."

The circumstances under which the Hon'ble High Court can exercise its extraordinary jurisdiction under Article 227 of the Constitution of India has been summed up in the decision cited supra. The relevant portion is extracted hereunder:

"(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.

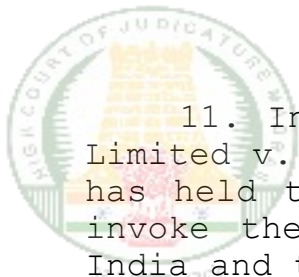
Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. 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."

(emphasis supplied)

10. In the decision in **Kishore Kumar Khaitan Vs. Praveen Kumar Singh** reported in **2006(2) SCALE 304 = (2006) 3 SCC 312**), the Hon'ble Supreme Court indicated the extent of jurisdiction under Article 227 of the Constitution of India thus:

"13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction."

(emphasis supplied)



11. In the decision in Southern and Rajamani Transport Private Limited v. R.Srinivasan, reported in 2010 (4) C.T.C. 690, this Court has held that the alternative remedy under C.P.C. is not a bar to invoke the jurisdiction under Article 227 of the Constitution of India and the same could be invoked:-

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- (a) to prevent abuse of process of law;
- (b) to prevent miscarriage of justice;
- (c) to prevent grave injustice;
- (d) to establish both administrative as well as judicial power of High Court.

12. From the above decisions, it is clear that in the ordinary circumstances, when there is an alternative remedy, the Court should not interfere with the *ex parte* interim order passed by the Court below. However, in exceptional cases, when 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, the High Court may step in to exercise of its supervisory jurisdiction.

13. For better appreciation and understanding, Order 39 Rule 3 of the Civil Procedure Code is extracted hereunder:

"3. Before granting injunction, Court to direct notice to opposite party.- The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies; and

(b) to file, on the day on which such injunction is granted or on the day immediately



following that day, an affidavit stating that the copies aforesaid have been so delivered or sent]"

14. The above proviso makes it clear that when a Court proposes to grant an interim order of injunction, without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself would be defeated by delay, it shall record the reasons as to why an ex parte order of injunction is being passed. Therefore, it is mandatory for a Court to record reasons for granting an ex parte interim order.

15. In the case of **Morgan Stanley Mutual Fund vs. Kartick Das, (1994) 4 SCC 225**, the Hon'ble Apex Court has enunciated the principles which govern the grant of ex parte injunction by a Court. The principles which have been laid down are:

"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court."



16. In the case of **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others**, reported in (1993) 3 SCC 161, in the matter of grant of ex parte injunction, the Hon'ble Apex Court has held as follows:

"34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the Proviso aforesaid was introduced, Rule 3 said "the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons "why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far reaching effect, as such a conditions has been imposed that Court must record reasons before passing



such order. If it is held that the compliance of the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of Taylor v. Taylor, (1875) 1 Ch. D. 426, Nazir Ahmed v. Emperor, AIR 1936 PC 253 (2). This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramachandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915.

35. As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force upto a particular date before which the plaintiff should be required to serve the notice on the defendant concerned."

(emphasis supplied)

17. When an ex parte interim order came to a challenge on the ground that there was no reason assigned, a learned Single Judge of this Court in an unreported decision in **NLC India Limited, Chennai and another Vs. M/s.SICAL Logistics Limited, Chennai**, (C.R.P. (MD). Nos.2429 to 2432 of 2018) dated 31.10.2018, has held as follows:

"14.Since in the very nature of things, the opposite party will be affected, the Court will have to state the reason as to why it is dispensing with the requirement to issue notice in that particular case. Recording reasons is the very soul of nature justice. It is a fundamental postulate of natural justice that no one shall be condemned unheard. No order to the prejudice of a party shall be passed without hearing him. Of course, no Court will pass the final order without serving notice on the opposite party. But, one cannot deny that an interim order also has an impact on the rights of the opposite party. That is why, it is stipulated



that even an interim order cannot be passed without notice to the opposite party. But, then there can be occasions where insistence on issuance of notice would render the interim application itself infructuous. Therefore, Courts are empowered to pass interim orders on an *ex parte* basis, that is without notice to the other side. But, then, it is a departure from the standard approach. In order to ensure that this power is not abused and that the Court applies its mind, it is insisted that reasons must be recorded as to why passing of an *ex parte* order is warranted. This is a requirement apart and over the above the triple tests of *prima facie* case, balance of convenience and irreparable injury.

15. In this case, the Court below has nowhere recorded the reasons as to why it did not order notice to the opposite party before granting interim relief. The Court below has not stated as to why it felt constrained to grant *ex parte* relief. When there is a departure from the general approach, the reasons must be set out justifying such a departure. Reasons are the only key to unlocking the mind of the Court. Since in this case admittedly no reasons have been assigned as to why an *ex parte* interim order is being passed, this Court has to necessarily come to the conclusion that there was non application of mind.

16. I hold that the principles underlying Rule 3 to Order 39 of C.P.C. will have to be borne in mind while considering an application under Section 9 of the 1996 Act. Since in this case the same has been lost sight of totally, I have no hesitation to set aside the orders impugned in these civil revision petitions. Accordingly, the orders impugned in these civil revision petitions are set aside. "

18. Now, let us analyse the present impugned order. For better appreciation, the impugned order is extracted hereunder:

"There is serious triable issue involved between female legal heirs. *Prima facie* case made out, documents verified, balance of convenience is in favour of this petitioner, considering the nature of the property, if the same is alienated, it will cause irretrievable injury to this petitioner, hence *ad interim* injunction granted



till 14.08.2019. Order 39 Rule 3A complied with today. Issue notice to the respondents. Call on 14.08.2019."

19. A bare perusal of the impugned order shows that though the Court below granted an *ex parte* order of interim injunction for a limited period, it has failed to assign reasons for granting such an order. The requirement for recording reasons for grant of *ex parte* injunction cannot be held to be a mere formality. Failure to give reasons in a case of this nature amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. If the statute requires a thing to be done in a particular manner, it should be done in that manner. But, in this case, the Court below has failed to do so. The opposite party against whom such an *ex parte* order passed without even put on notice must know the reasons on which such an order is passed.

20. Mere mentioning of the words in the *ex parte* interim order to the effect that "*Prima facie* case made out", "balance of convenience is in favour of the petitioner" and "if the interim order is not granted, it will cause irretrievable injury to this petitioner" are not sufficient to hold that the mandatory requirements of Order 39 Rule 3 of C.P.C. has been complied with. Recording of reasons for such conclusions in the order can only be treated as strict compliance of Order 39 Rule 3 of C.P.C. In this case, the Court below, without reference to any material, has assumed that the first respondent/plaintiff has a *prima facie* case and that the balance of convenience is in favour of the first respondent/plaintiff and mechanically, granted an *ex parte* order of interim injunction. As the impugned order has been passed in violation of Order 39 Rule 3 of C.P.C. and the failure of the Court below to render the necessary findings to support its order is nothing but a jurisdictional error, this Court has no hesitation to interfere with the order passed by the Court below.

21. In the result, this Civil Revision Petition is allowed and the *ex parte* interim order dated 12.07.2019 passed by the Court below in I.A.No.173 of 2019 in O.S.No.60 of 2019 is set aside. It is open to the Court below to pass a reasoned order on merits, after hearing both the parties. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Principal District Court,
Thoothukudi.

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+1 CC to MR.S.JOEL, Advocate (SR-90108[F] dated 27/09/2019)

order made in
C.R.P. (MD) No.1363 of 2019
27.09.2019

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MK (15.10.2019) 14P 3C