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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 551/2022**

JK INTERIORS

..... Petitioner

Through: None

versus

ANJU ALAGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

31.10.2022

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1. On the last date of hearing, learned Counsel for the petitioner was granted time to satisfy this Court that, despite the fact that the order dated 24th March 2022, passed by the learned Civil Judge, was appealable, a petition under Article 227 of the Constitution of India would nonetheless be maintainable.

2. Despite the matter having been called out twice today, there is no appearance on behalf of the petitioner.

3. In *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*¹, the Supreme Court has, with respect to the availability of a remedy under Article 227 of the Constitution of India against orders, which are passed by civil courts, and against which appeals lie to civil courts, held thus:

¹ (2019) 9 SCC 538

“11. Secondly, the High Court ought to have seen that when remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In **A. Venkatasubbiah Naidu v. S. Chellappan**², this Court held that though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy.

12. *But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar.* Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in **Surya Dev Rai v. Ram Chander Rai**³, pointed out in **Radhey Shyam v. Chhabi Nath**⁴, that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its

² (2000) 7 SCC 695

³ (2003) 6 SCC 675

⁴ (2015) 5 SCC 423

power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

(Emphasis supplied)

4. In view of the law enunciated in the afore-extracted passages from *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai*¹, this petition would not be maintainable in view of Article 227 of the Constitution of India.

5. Accordingly, the petition is dismissed as not maintainable.

C. HARI SHANKAR, J

OCTOBER 31, 2022

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