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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM (M) 569/2022 & CM APPL. 27450/2022, CM APPL. 27451/2022

ANKIT SAINI & ORS. Petitioners
Through: Mr. Sanjay Mishra, Adv.

versus

STATE BANK OD INDIA STAFF ASSOCIATION & ORS.
..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **02.06.2022**

1. The impugned order, dated 11th March, 2022, rejects an application, filed by the petitioners seeking interim injunction in a pending civil suit.
2. Though the application purports to have been filed under Section 151 of the Code of Civil Procedure, 1908 (CPC), inasmuch as it specifically seeks *ad interim ex parte* stay during the pendency of the civil suit, it is essentially preferred under Order XXXIX Rules 1 and 2 of the CPC.
3. An order rejecting an application under Order XXXIX Rules 1 and 2 of the CPC is appealable under Order XLIII Rule 1(r) of the CPC.



4. Where the order under challenge has been passed by a civil court, and an appeal lies, against such order to another civil court under the CPC, the following passages, from the *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*¹, rendered by a bench of three Hon'ble Judges of the Supreme Court, clearly rule out, in all but the most exceptional cases, exercise of Article 227 jurisdiction by the High Court:

“11. Secondly, the High Court ought to have seen that when a 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*

¹ (2019) 9 SCC 538

² (2000) 7 SCC 695



*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 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)

5. To the same effect is the decision in **A. Venkatasubbiah Naidu**², which holds thus:

“22. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. 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 one or the other before he resorts to a constitutional remedy.*”

(Emphasis supplied)

³ (2003) 6 SCC 675

⁴ (2015) 5 SCC 423



6. *Sadhana Lodh v. National Insurance Co.*⁵ holds that, where a remedy of revision, against the impugned order, is available under Section 115 of the CPC, Article 227 of the Constitution of India ought not to be invoked.

7. Following these decisions, and reserving liberty with the petitioners to pursue appellate or any other remedy available to the petitioners in accordance with law, the present petition is dismissed as not maintainable.

8. Miscellaneous applications are also disposed of.

JUNE 2, 2022
r.bararia

C. HARI SHANKAR, J

⁵ (2003) 3 SCC 524