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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 1219/2022 & CM APPL. 48844/2022, CM APPL.  
48845/2022

MOHINDER SINGH ARORA & ORS. .... Petitioners  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE (N.C.T OF DELHI) & ANR. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

+ CM(M) 1221/2022 & CM APPL. 48894/2022, CM APPL.  
48895/2022

MOHINDER SINGH ARORA & ORS. .... Petitioners  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE (N.C.T OF DELHI) & ANR. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

+ CM(M) 1222/2022 & CM APPL. 48926/2022, CM APPL.  
48927/2022

SIMARDEEP SINGH ARORA .... Petitioner  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE (N.C.T OF DELHI) & ORS. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

+ CM(M) 1223/2022 & CM APPL. 48932/2022, CM APPL.

MOHINDER SINGH ARORA & ORS. .... Petitioners  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE (N.C.T OF DELHI) & ANR. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

+ CM(M) 1224/2022 & CM APPL. 48934/2022, CM APPL.  
48935/2022

SIMARDEEP SINGH ARORA .... Petitioner  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE (N.C.T OF DELHI) & ORS. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

+ CM(M) 1225/2022 & CM APPL. 48936/2022, CM APPL.  
48937/2022

MOHINDER SINGH ARORA & ORS. .... Petitioners  
Through: Mr. Satish Tamta, Sr. Adv. with  
Mr. Vikramaditya Bhaskar, Mr. Shariq Iqbal  
and Mr. Abhay Dixit, Advs.

versus

STATE N.C.T OF DELHI & ANR. .... Respondents  
Through: Ms. Avni Singh, Adv. for R-1

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

**JUDGMENT (ORAL)**  
**15.11.2022**

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1. These petitions, under Article 227 of the Constitution of India, assail the order dated 21<sup>st</sup> May 2022 passed by the learned Civil Judge in a batch of suits in which the petitioner was Defendant 1 and Respondent 2 Gurvinder Dhodi was the plaintiff.

2. The case sought to be made out by Respondent 2 against the various defendants in the suit, forming subject matters of these petitions, is identical.

3. The case of Respondent 2, as urged in the plaint, may be set out thus:

(i) Respondent 2 was running a business in food stuffs in Sharjah under the name and style of Al Fadel Foodstuff Trading Company Ltd. (“the Company”, hereinafter) since 1985. Simardeep Singh Arora, Petitioner 3 in the present petition and Defendant 3 in the suit, was employed by Respondent 2 as a manager in the Company *vide* contract dated 12<sup>th</sup> March 2003.

(ii) Respondent 2 was, thereafter, deported to India in October 2007. At that time, according to the plaint, Respondent 2 entrusted his entire business to Petitioner 3 Simardeep Singh Arora and also executed various powers of attorney, authorising Petitioner 3 Simardeep Singh Arora to perform all acts and sign all documents, including cheques, necessary for conducting the affairs of the Company.

(iii) The plaint alleged that the petitioners, as the defendants in the suit, siphoned off huge amounts from the Company and

that, in collusion with Mohd. Ali Saeed Abdulla, a friend of Petitioner 3, who declared himself the owner of the properties of the Company. It is also alleged, in the plaint, that the petitioners filed false cases against Respondent 2.

(iv) The plaint further alleges that, using the money thus siphoned off from the Company, the petitioners purchased several properties in Delhi. Inasmuch as the properties were purchased using monies which, according to the plaint, were siphoned from the Company, Respondent 2 sought a declaration that ownership and possession of the said properties vested with him and also sought a decree of permanent injunction against the petitioner from dealing with the said properties.

(v) The prayer clause in the plaint reads thus:

“In view of above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:-

a. pass a decree of declaration in favour of the plaintiff and against the defendants, thereby, declaring that the ownership/title documents of the defendants in respect of the suit property i.e. Property bearing No.43-B/l, Khasra No.34/19, Nilothi, Delhi measuring 405 sq. yds., are null and void having no value in the eyes of law; it is further prayed that a further decree of declaration be also passed thereby declaring the plaintiffs as sole, absolute and exclusive owner of the said property;

b. Pass a decree of possession in favour of the plaintiff and against the defendants, thereby, directing the defendants to vacate and hand over the peaceful and actual possession of the suit property i.e. Property bearing No.43-B/l, Khasra No.34/19, Nilothi, Delhi measuring 405 sq. yds., to the plaintiff;

c. pass a decree of permanent injunction in favour of the Plaintiff and against the defendants, thereby, the defendants, their agents, associates, employees, family members etc. are restrained from

selling, transferring and/ or creating any third party interest in respect of the property i.e. Property bearing No.43-B/I, Khasra No.34/19, Nilothi, Delhi measuring 405 sq. yds., in any manner whatsoever, in the interest of justice;

such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favour of the plaintiff and against the defendants to meet the ends of justice.”

(vi) Respondent 2 moved an application, in the pending suit, under Order XI Rule 14 of the Code of Civil Procedure, 1908 (CPC), seeking a direction to petitioners to file the following documents in the court:

- i. Share Sale and Assignment Contract of AL Fadel Trading LLC dated 30.09.2007.
- ii. Certificate issued from Economic Development Department, Govt. of Sharjah dated 01.10.2007.
- iii. Memorandum of understanding dated 08.03.2000.
- iv. Income tax returns/file from the Assessment years 2008-09 to 2013-14.
- v. GPA, SPA, Agreement to Sell and payment receipt relating to purchase of the suit property duly notarized by defendants as buyer and the erstwhile owner (seller)
- vi. Registered Will executed by defendants and registered at the sub-registrar office, Nangloi, in respect of suit property.”

(vii) The application of Respondent 2 stands partly allowed by the learned Civil Judge *vide* order dated 21<sup>st</sup> May 2022.

4. The present petition takes exception to the impugned order dated 21<sup>st</sup> May 2022 only insofar as it directs (i) Petitioner 3 to furnish

his income tax returns for the assessment years 2008-09 to 2013-14 and (ii) the defendants in the suit to furnish the ownership documents in respect of the properties which form subject matter of Civil Suits 8525/2016, 8526/2016, 8508/2016, 7354/2016, 7353/2016, 7350/2016 and 7591/2016.

### **Petitioner's Submissions**

5. Mr. Satish Tamta, learned Senior Counsel for the petitioner, submits that there was no justification for the learned Civil Judge to direct the furnishing of the aforesaid documents as, by doing so, the learned Civil Judge is conducting a roving and fishing enquiry. He relies, for this submission, on the judgment of a coordinate Bench of this Court in *Arun Jaitley v. Arvind Kejriwal*<sup>1</sup>.

6. The decision in *Arun Jaitley*<sup>1</sup> adjudicated various interlocutory applications.

7. Mr. Tamta relies on the said decision in *Arun Jaitley*<sup>1</sup> to the extent of the findings contained in respect of IA 2703/2017, which may be reproduced thus:

“12. The defendant no.1 by this application seeks production by the plaintiff of the records of bank accounts of the plaintiff as well as all his family members for the relevant period along with a narrative of each and every entry therein.

13. The counsel for the applicant/defendant no.1 on enquiry as to the relevance of the said documents contends that it is the plea of the plaintiff that he has not received any benefits from the Delhi & District Cricket Association (DDCA) or from any contracts of the DDCA and the said records sought to be produced are necessary for the applicant/defendant no.1 to peruse to find out whether there



are any entries in the bank accounts of the plaintiff and his family members of having received any payments from DDCA or from any of the firms with which DDCA had entered into the contract.

14. The counsel for the applicant/defendant no.1 admits that the onus of the said issue is on the defendants.

15. Once that is so, the documents sought from the plaintiff are nothing but in the nature of fishing and roving enquiry.

16. The counsel for the applicant/defendant no.1 then states that without the said records "how will the defendant no.1 prove the issue".

17. Though not in the domain of the Court to advise, but it is for the applicant/defendant no.1 to adduce evidence of the accounts from which monies are alleged to have flowed to the plaintiff or his family members, instead of wanting to find out from the bank accounts of plaintiff and his family members whether they have received any money.

18. There is no merit in the application.

19. Dismissed."

8. Mr. Tamta additionally submits that the petitioner had filed an application under Order VII Rule 11 of the CPC, submitting that the suit was liable to be dismissed. He points out that there is a wide swathe of authority to the effect that applications under Order VII Rule 11 of the CPC, inasmuch as they touch the very jurisdiction of the proceedings, are required to be decided at the outset.

9. In directing production of documents without adjudicating on the petitioner's application under Order VII Rule 11 of the CPC, Mr. Tamta submits that the learned Civil Judge has additionally erred.

### **Issues that arise for consideration**

10. Two issues, therefore, arise for consideration. The first is whether the learned Civil Judge was justified in directing production

of the documents noted in para 3(vi) supra. The second is whether the learned Civil Judge ought, in the first instance, to have decided the petitioner's application under Order VII Rule 11 of the CPC.

## Analysis

### Re. direction to produce documents

11. Insofar as the first issue is concerned, having perused the impugned order, heard learned Counsel for the parties as well as Respondent 2 who appears in person and in view of the limited scope of Article 227 of the Constitution of India, I do not find this to be a fit case to interfere with the decision of the learned Civil Judge.

12. It was alleged by Respondent 2, in the plaint instituted by him, that, out of the money allegedly siphoned from the Company, the petitioners had enriched themselves and augmented their assets by purchasing various properties. These various properties formed subject matter of the individual suits, which sought a direction for a declaration that Respondent 2 was entitled to be regarded as the owner thereof.

13. Order XI Rule 14 of the CPC reads thus:

**“14. Production of documents.** – It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”



14. Order XI Rule 14 is categorical in ordaining that “it shall be lawful for a Court” to, at any time during the pendency of a suit, order the production, by any party thereto, upon oath, of documents in his power and possession, relating to any matter in question in the suit. The provision clothes the court with absolute discretion in the matter.

15. Any documents which, in the opinion of this Court, relate to any matter in question in the suit, can be summoned by the court.

16. The expression “relate to” is an expression of wide and compendious import.

17. In *Supdt. & Remembrancer of Legal Affairs, Bengal v. Bhaju Majhi*<sup>2</sup> the High Court of Calcutta has noted the expression “relates to” as ordinarily meaning “is connected with” or “have reference to”. In a similar vein, the High Court of Madras, in *State Wakf Board v. Abdul Azeez Sahib*<sup>3</sup> has observed that the words “relating to” are words of comprehensiveness which might both have a direct as well as an indirect significance depending on the context.

18. The Supreme Court has, in *Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale*<sup>4</sup>, set the matter at rest by holding that the expression “relating to” “is of widest amplitude which includes even the question as to the existence, validity and effect”.

19. The Legislature having consciously employed the expression “relate to” in Order XI Rule 14 of the CPC, it would be folly on the

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<sup>2</sup> AIR 1930 Cal 291

<sup>3</sup> AIR 1968 Mad 79

<sup>4</sup> AIR 1995 SC 1102

part of a court, interpreting the provision, to restrict the scope and the ambit of the expression. Clearly, any document which has any connection with the question in issue in the suit can, if the court deems it appropriate, be directed to be produced. If the court does so, the provision clearly states that “such a decision shall be lawful”.

**20.** Given the parameters of the dispute between the parties in the present case, and the allegations levelled in the plaint, and irrespective of the correctness or otherwise of the said allegations or the merits of the rival contentions urged by the parties, it cannot be said that the title documents relating to the properties forming subject matter of Civil Suits 8525/2016, 8526/2016, 8508/2016, 7354/2016, 7353/2016, 7350/2016 and 7591/2016 and the income tax returns of Petitioner 3 did not relate to the matters in dispute in the suit.

**21.** The relevance of the said documents may be another matter altogether and it may be open to the petitioner, during the course of trial, to contend that the said documents are not relevant or that they do not assist the case of the respondents. The mere direction for production of the documents cannot be treated as prejudicing the petitioner in any manner or, in any event, making out a case for interference by this Court under Article 227 of the Constitution of India.

**22.** It is a misconception that Article 227 of the Constitution of India clothes the High Court with wide powers. The Supreme Court has, in several decisions, ruled to the contrary. The following passages, from some of the authoritative pronouncements on the point, place the matter beyond pale of controversy:

(i) ***Estralla Rubber v. Dass Estate (P) Ltd.***<sup>5</sup>

“7. This Court in ***Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand***<sup>6</sup> in para 12 has stated that the power under Article 227 of the Constitution 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. Reference also has been made in this regard to the case ***Waryam Singh v. Amarnath***<sup>7</sup>. This Court in ***Bathutmal Raichand Oswal v. Laxmibai R. Tarte***<sup>8</sup> has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

(ii) ***Garment Craft v. Prakash Chand Goel***<sup>9</sup>

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [***Prakash Chand Goel v. Garment Craft***<sup>10</sup>] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [***Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar***<sup>11</sup>] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this

<sup>5</sup> (2001) 8 SCC 97

<sup>6</sup> AIR 1972 SC 1598

<sup>7</sup> AIR 1954 SC 215

<sup>8</sup> AIR 1975 SC 1297

<sup>9</sup> (2022) 4 SCC 181

<sup>10</sup> 2019 SCC OnLine Del 11943

<sup>11</sup> (2010) 1 SCC 217

Court in *Estralla Rubber*<sup>5</sup> has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

(iii) *Puri Investments v. Young Friend and Co.*<sup>12</sup>:

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding

fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum. ....”

- (iv) ***Sadhana Lodh v. National Insurance Co. Ltd.***<sup>13</sup>

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

(Emphasis Supplied)

- (v) ***Ibrat Faizan v. Omaxe Buildhome (P) Ltd.***<sup>14</sup>:



“28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber*<sup>5</sup>, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft*<sup>9</sup>). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

23. Within the limited parameters of the jurisdiction vested in this Court by Article 227 of the Constitution of India, therefore, I do not find that a case has been made out to interfere with the impugned order dated 21<sup>st</sup> May 2022 insofar as it directs Petitioner 3 to furnish his income tax returns for the years 2008-09 to 2013-14 and directs the petitioners to produce the ownership documents relating to the properties forming subject matter of Civil Suits 8525/2016, 8526/2016, 8508/2016, 7354/2016, 7353/2016, 7350/2016 and 7591/2016.

24. That that extent, therefore, the impugned order is upheld.

Re. pending application of petition under Order VII Rule 11, CPC

25. That takes us to the second issue, of whether the learned Civil Judge ought to have passed the impugned order even while the petitioners' application under Order VII Rule 11 was pending.



26. It has been held in *R. K. Roja v. U. S. Rayudu*<sup>15</sup> that an application under Order VII Rule 11 of the CPC, inasmuch as it touches the very jurisdiction of the court to adjudicate on the dispute and the maintainability of the suit itself, has to be decided at the first instance.

27. As such, I am of the opinion that the learned Civil Judge ought, at the first instance, to have decided the petitioners' application under Order VII Rule 11 of the CPC. In the event that the said application is allowed, the suit itself would not survive in which case there would be no question of the impugned order surviving either. However, if the petitioners' application under Order VII Rule 11 is dismissed, then the impugned order, which stands otherwise upheld, would have to be obeyed.

### Conclusion

28. I am informed that the matter is listed before the learned Civil Judge today i.e., on 15<sup>th</sup> November 2022. The next date of hearing is yet to be fixed.

29. Accordingly, in the interests of justice, the matter is re-notified before the learned Civil Judge on 25<sup>th</sup> November 2022, on which date both sides would appear before the learned Civil Judge.

30. On the said date, the learned Civil Judge is requested to hear the petitioners' application under Order VI Rule 11 of the CPC and take a decision thereon.

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<sup>15</sup> (2016) 12 SCC 275

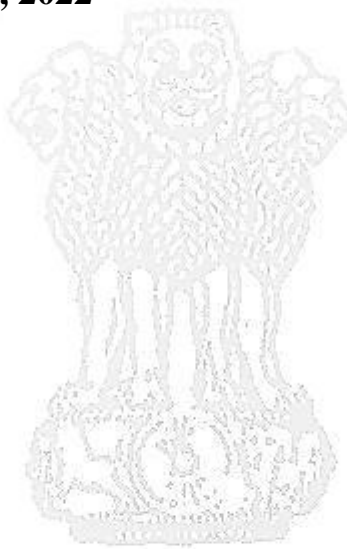
**31.** The upholding of the impugned order dated 21<sup>st</sup> May 2022, needless to say, shall be subject to the decision of the learned Civil Judge on the petitioners' application under Order VII Rule 11.

**32.** With the aforesaid observations, these petitions are disposed of *in limine*.

**C. HARI SHANKAR, J.**

**NOVEMBER 15, 2022**

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