

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SRI JUSTICE V.SRINIVAS

C.R.P.No.199 of 2022

ORDER: *(per Hon'ble D.V.S.S.Somayajulu)*

Both the learned senior counsel argued on the issue whether the Civil Revision Petition is maintainable or not. They invited a finding on this limited aspect only.

Briefly stated, the facts are as follows:

A suit was filed by three plaintiffs against present revision petitioner for a permanent injunction restraining the defendant (petitioner) from using in any way the Trademark or a device mark 'IONS' as a word or logo etc.; for a mandatory injunction to remove the same and for other reliefs. In the said suit, the present revision petitioner filed an application under Order 7 Rule 11 C.P.C., to reject the plaint on the ground that the plaint did not disclose a cause of action etc. The same came to be dismissed by the impugned order dated 06.12.2021 which is now challenged in the Civil Revision Petition.

Learned counsel for the respondent in the Civil Revision petition by relying upon section 8 of the Commercial Courts Act, 2015 (for short 'the Act') argues that there is an absolute bar against a Civil Revision Petition filed against the interlocutory order of a Commercial Court and that the only challenge to the said order is an appeal as per section 13 of the said Act. He points out that by clever drafting; an application has been filed as a Civil Revision Petition under Article 227 of the Constitution of India. He points out that Article 227 of the Constitution of India only confers a supervisory jurisdiction on this Court to ensure that the Subordinate Courts act within the jurisdiction etc. Therefore, he submits that the Civil Revision Petition is not maintainable.

Learned counsel for the petitioner on the other hand relies upon a large compendium of case law etc., to state that the power available under Article 227 of the Constitution of India cannot be circumscribed or taken away by a legislation and that the power of judicial review under Article 226 and 227 of the Constitution of India cannot be taken away by section 8 of the Act. This is the sum and substance of his

submission. He contends that the Civil Revision Petition is maintainable.

As far as the law is concerned, it is clear that under Article 227 of the Constitution of India a special power is conferred on the High Courts. A large volume of case law is available on the subject, but this Court is only relying upon one of the many cases namely, ***Shalini Shyam Shetty and another v. Rajendra Shankar Patil***¹. In para 49 of the said order, the following was held:

49. 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 the 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.

¹ (2010) 8 SCC 329

(c) High Courts cannot, at 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 the 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 their 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* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* [AIR 1954 SC 215], 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 the 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 once 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) The 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 *L.Chandra Kumar v. Union of India* and therefore abridgment 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 the 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 counterproductive and will divest this extraordinary power of its strength and vitality.

If the present case is viewed against the backdrop of this settled legal position, it is clear that the parameters stated above are not met. The essential challenge is on the merits of the matter. The grounds of appeal and the submissions make

it clear that the power under Order 7 Rule 11 CPC., has been assailed and the manner in which it was appreciated by the Commercial Court is under challenge. Arguments submitted are also on the failure of the trial Court to appreciate the matter in its proper perspective, particularly when an application under Order 7 Rule 11 C.P.C., has been filed. The intention of the present petitioner is to assail the order on its intrinsic merits and on the grounds of failure to appreciate the legal and factual submissions, but not on grounds of perversity; assumption of jurisdiction wrongly etc.

In the opinion of this Court, this cannot be done in a proceeding under Article 227 of the Constitution of India. Article 227 of the Constitution of India cannot be used as a method to circumvent Section 8 of the Act. A proceeding filed under Article 227 of the Constitution of India, should make out a case of patent perversity, manifest failure of justice and/or exercise of jurisdiction which is not conferred on the Tribunal, Court etc. An error of law of fact or the possibility of a different conclusion being possible etc., is not a ground for this Court to interfere. Even the judgment cited by the learned counsel for the respondent in CRP.No.6745 of 2018,

in paras 17 and 18, states that Article 227 of the Constitution of India cannot be used as a ruse to circumvent section 8 of the Act.

In this view of the matter, without going deeper into the merits of the case, which have been argued at length by the learned counsels, this Court holds that the in this Civil Revision Petition is misconceived.

The Civil Revision Petition is held to be not maintainable. Hence, it is dismissed. It is left open to the petitioner to pursue their legal remedies. All legal/factual issues/pleas are left open.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU,J

V.SRINIVAS,J

Date: 27.06.2023
KLP