Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2374 OF 2015
[Arising out of SLP(C) No. 10203 of 2014]

Sh Jogendrasinhji Vijaysinghji ... Appellant

Versus

State of Gujarat & Ors. ... Respondents

WITH

C.A. NOS. 2375-76 OF 2015 (@ SLP(C) NO.11756-57/2014)
C.A. NO. 2717 OF 2015 (@ SLP(C) NO. 12027/2014)
C.A. NOS. 2669-2716 OF 2015 (@ SLP(C) NO.14264-14311/2014)
C.A. NOS. 2378-2385 OF 2015 (@ SLP(C) NO.17496-17503/2014)
C.A. NO. 2386 OF 2015 (@ SLP(C) NO. 18398/2014)
C.A. NOS. 2387-2388 OF 2015 (@ SLP(C) NO. 19567-68/2014)
C.A. NO. 2665 OF 2015 (@ SLP(C) NO. 20828/2014)
C.A. NOS. 2389-2390 OF 2015 (@ SLP(C) NO. 20975-76/2014)
C.A. NOS. 2391-2392 OF 2015 (@ SLP(C) NO. 30033-34/2014)
C.A. NOS. 2662-2663 OF 2015 (@ SLP(C) NO. 34183-84/2014)
C.A. NOS. 2141-2144 OF 2015 (@ SLP(C) NOS. 6504-6507) (CC NO 858-861/2015)
C.A. NO. 2664 OF 2015 (@ SLP(C) NO. 20809/2014)

J U D G M E N T

Dipak Misra, J.

In this batch of appeals, by special leave, the appellants call in question the legal substantiality of the judgment and

order dated 26.12.2013 passed by the Special Bench of the High Court of Gujarat in a bunch of Letters Patent Appeals preferred under Clause 15 of the Letters Patent.

2. As the factual matrix would unveil, the Division Bench that referred the matter to a larger Bench, noticed conflict in ***Revaben Wd/o. Ambalal Motibhai and others v. Vinubhai Purshottambhai Patel and others***[1] and ***Dilavarsinhsinh Khodubha Jadeja v. State of Gujarat and others***[2] and at that juncture framed two questions. The Special Bench adverted to the facts necessitating the reference in detail and took note of the preliminary objections of the learned counsel for the State as regards the maintainability of the Letters Patent Appeal on many a score and thereafter thought it appropriate to frame the questions afresh and accordingly it formulated questions.

3. At the outset, we may state that though eight questions have been drawn up by the special Bench yet we are disposed to think that they can really be put into three basic compartments, namely:

[1] 2013 (1) GLH 440
[2] 1995 (1) GLH 58

(i) In what context the phrase 'original jurisdiction' appearing in Clause 15 of the Letters Patens should be construed, that is, by taking into consideration the plain meaning of the same as the Court's power to hear and decide the matter before any other court and review the same; or should it be construed in the context with the power of the Court to issue a writ under Article 226 of the Constitution of India, which is always original.

(ii) Assuming the words "to issue to any person or authority" as contained in Article 226 of the Constitution are interpreted so as to include the tribunal or the Court, then in such circumstances, would it be the correct proposition of law to say that appellate tribunal is not amenable to a writ of certiorari and the only remedy available to the litigant to challenge the order passed by an appellate tribunal is under Article 227 of the Constitution and, ancillary one, when a petition assails an order of the tribunal, be it a tribunal of first instance or an appellate tribunal, should it be necessarily treated as a petition under Article 226 of the Constitution of India in every case or it would depend upon facts of each case,

more particularly the grounds of challenge and the nature of order passed.

(iii) Whether in a petition for issue of a writ of Certiorari under Article 227 of the Constitution of India, the tribunal/Court whose order is impugned in a petition must be a party to the petition so that the writ sought from the Court can be issued against the tribunal/Court, but if the petition is for the relief under Article 227 only, then the tribunal/Court whose order is under assail need not be a party-respondent on the reasoning that by entertaining a petition under Article 227 of the Constitution, the High Court exercises its power of superintendence which is analogous to the revisional jurisdiction.

4. The special bench as is evincible from the judgment impugned, has delved into the questions framed by it, if we permit ourselves to say so, at great length and recorded its conclusions in seriatum. It is necessary to reproduce the relevant conclusions, which are as follows:-

> "(iii) When a writ is issued under Article 226 of the Constitution, it is issued in exercise of its original jurisdiction whether against the Tribunal or inferior Court or administrative authority.

(iv) The power exercised under Article 226 of the Constitution is in exercise of original jurisdiction and not supervisory jurisdiction.

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(vii) A writ of certiorari lies in appropriate cases against the order of Tribunal or Court subordinate to the High Court where such a Court, or Tribunal acts not only as an authority of first instance but even if such a Court or Tribunal acts as an appellate or revisional authority provided a case for a writ of certiorari is made out to the satisfaction of the Court concerned. Thus, if an appellate or revisional order of the Court or Tribunal, subordinate to a High Court, suffers from a patent error of law or jurisdiction, the same could be challenged before the High Court with the aid of Article 226 of the Constitution and it could not be said that such an appellate or revisional order of the Court or Tribunal could be challenged with the aid of Article 227 alone.

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(ix) The term "original jurisdiction" as contained in Clause 15 of the Letters Patent should be understood in context with the power of the High Court to issue a high prerogative writ like a writ of certiorari under Article 226 of the Constitution of India. It is that original power to issue a writ under Article 226 of the Constitution of India which makes the proceedings original and the exercise of such power will always be original jurisdiction.

(x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is

not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

(xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court.

To put it very explicitly, take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself.

However, if a learned Single Judge, in purported exercise of power under Article 226 of the Constitution of India, issues a writ of certiorari, although the same is not maintainable, an appeal under Clause 15 of the Letters Patent would nevertheless be maintainable against such order.

To put it in other words, take a case where a party on his own invokes supervisory jurisdiction under Article 227 of the Constitution of India, and in such a petition, the Court issues a writ of certiorari, then against such an order an LPA would be maintainable.

To put it explicitly clear, take a case where in a petition neither there is a prayer for issue of a writ of certiorari nor the Tribunal/Authority or Court whose order is impugned is impleaded as a party respondent, and despite such being the position, if the Court proceeds to issue a writ of certiorari, then against such an order an LPA would be maintainable.

(xiii) A combined application under both Articles 226 and 227 of the Constitution of India can be entertainable only when the court fees payable for invoking both the provisions have been paid in aggregate. If court fees payable for invoking only one of the Articles 226 and 227 have been affixed, the Court before dismissing the application on that ground may give option to the petitioner to choose only one of such provisions, if he does not pay the balance amount of court fees and the application should be treated accordingly. It is, however, for the Court to decide whether the facts of the case justify invocation of original jurisdiction or it is a fit case for exercising supervisory jurisdiction.

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(xv) When a remedy for filing the Revision under Section 115 of the Civil Procedure Code has been expressly barred, then in such a case, a petition under Article 227 of the Constitution of India would lie and not a writ petition under Article 226 of the Constitution of India. When the Parliament has thought fit to restrict the powers under Section 115 of the Code with a definite object, then, under such circumstances an order which is not revisable under Section 115 of the Code of Civil Procedure cannot be challenged by way of filing a Writ Petition under Article 226 of the Constitution invoking extraordinary jurisdiction of the High Court and that too an interlocutory order passed by the Civil Court in a Regular Suit proceedings."

5. At this juncture, we are obligated to state that the conclusions have been recorded by the High Court to cover all kinds of possibilities, but we are of the considered opinion

that it may not always be possible to do so and hence, advertence in detail to the said conclusions is neither necessitous nor warranted.

6. Having said that, presently we shall proceed to deal with the first question we have stated hereinbefore. In this regard, reference to the authority in ***T.C. Basappa v. T. Nagappa and Another***[3] would be fruitful. The controversy before the Constitution Bench, apart from other aspects, also pertained to scope of jurisdiction under Article 226 of the Constitution. Dealing with the said facet, the larger Bench opined that:-

> "7. One of the fundamental principles in regard to the issuing of a writ of 'certiorari', is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in *Rex* v. *Electricity Commissioners*[4]:
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> > "Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

[3] AIR 1954 SC 440
[4] 1924-1 KB 171 at p.205 (C)

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in – 'Walsall's Overseers v. L. & N. W.Rly. Co[5].

8. The supervision of the superior court exercised through writs of 'certiorari' goes on two points, as has been expressed by Lord Sumner in *King* v. *Nat Bell Liquors Limited*[6]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of 'certiorari' could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

9. 'Certiorari' may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide '*Halsbury*, 2nd edition, Vol. IX, page 880.

[5] (1879) 4 AC 30 at p. 39 (D)
[6] (1922) 2 AC 128 at p. 156 (E)

When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess, vide *Bunbury v. Fuller*[7] *& R. v. Income Tax Special Purposes Commissioners*"[8]

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11. In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms, vide '*Veerappa Pillai v. Raman and Raman Ltd.*[9] and said:

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of 'certiorari' under Article 226 of the Constitution."

[7] (1854) 9 EX 111 (F)
[8] (1889) 21 QBD 313 (G)
[9] AIR 1952 SC 192 at pp. 195-196 (I)

7. In ***Hari Vishnu Kamath v. Ahmad Ishaque and Ors.***[10], a seven- Judge Bench, while dealing with the scope of proceeding under Article 226 of the Constitution, observed that there can be no dispute that the orders of the Election Tribunals are subject to the supervisory jurisdiction of the High Courts under Article 226 and a writ of certiorari under that Article will be competent against decisions of the Election Tribunals also. The Court referred to the decision in ***T.C. Basappa*** (supra) and other authorities and ruled thus:-

> "We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in *Waryam Singh* v. *Amarnath*[11], where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under Section 107 of the Government of India Act, 1915. It may also be noted that while in a 'certiorari' under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of 'certiorari' and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."

In the said case, the court directed as follows:-

[10] AIR 1955 SC 233
[11] AIR 1954 SC 215

> "Under the circumstances, the proper order to pass is to quash the decision of the Tribunal and remove it out of the way by 'certiorari' under Article 225,and to set aside the election of the first respondent in exercise of the powers conferred by Article 227."

8. In ***Nagender Nath Bora v. The Commissioner of Hills Division and Appeals, Assam and others***[12], while dealing with the scope of Articles 226 and 227 of the Constitution, the Constitution Bench referred to the authority in ***Waryam Singh*** (supra) and held that:-

> "It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article, 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Hence, interference by the High Court, in these cases, either under Article 226 or 227 of the Constitution, was not justified."

9. In this context, we may usefully refer to another Constitution Bench decision in ***State of Uttar Pradesh and others v. Dr. Vijay Anand Maharaj***[13], wherein it has been ruled:-

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[12] AIR 1958 SC 398
[13] AIR 1963 SC 946

> "9. Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English Courts, it is modelled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds."

10. After so stating, the larger Bench referred to the decision in ***Hamid Hassan v. Banwarilal Roy***[14] wherein the Privy Council had observed that the original civil jurisdiction which the Supreme Court of Calcutta had possessed over certain classes of persons outside the territorial limits of that jurisdiction was a matter of original jurisdiction. Thereafter, the Court referred to certain High Court decisions and opined:-

> "…. It is, therefore, clear from the nature of the power conferred under Article 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Article 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary

[14] AIR 1947 PC 90

> original jurisdiction. If that be so, it cannot be contended that a petition under Article 226 of the Constitution is a continuation of the proceedings under the Act."

11. In this context, reference to the nine-Judge Bench decision in ***Naresh Shridhar Mirajkar v. State of Maharashtra and another***[15] is absolutely imperative. In the said case, the Court was dealing with the lis whether a judicial order passed by the High Court could violate any fundamental right. The majority, speaking through Gajendragadkar, C.J., commenting on the order of the High Court expressed:-

> "38. ..... It is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1)."

After so stating, the learned Chief Justice observed thus:-

[15] AIR 1967 SC 1

> "39. ..... Just as an order passed by the court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court, so could the impugned order be challenged in appeal under Article 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties, or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Article 19(1), must fail."

12. It is apt to note here that the nine-Judge Bench referred to ***Budan Choudhry v. State of Bihar***[16], ***Parbhani Transport Cooperative Society Ltd. v. Regional Transport Authority, Aurangabad***[17] and ***Prem Chand Garg v. Excise Commissioner, U.P. Allahabad***[18] and explained the same and eventually held:-

> "If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."

[16] AIR 1955 SC 191
[17] AIR 1960 SC 801
[18] AIR 1963 SC 996

13. In the first decade of this century in ***Rupa Ashok Hurra v. Ashok Hurra and Another***[19], the Constitution Bench referred to the ***Triveniben v. State of Gujarat***[20], reiterated the same principle and observed:-

> "It is well settled now that a judgment of court can never be challenged under Articles 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in *Naresh Shridhar Mirajkar* v. *State of Maharashtra* (supra) and also in *A.R. Antulay* v. *R.S. Nayak*[21] , the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper."

14. Recently, in ***Radhey Shyam & Anr. v. Chhabi Nath & Ors***.[22], a three-Judge Bench while dealing with the correctness

[19] (2002) 4 SCC 388
[20] (1989) 1 SCC 678
[21] (1988) 2 SCC 602
[22] 2015 (3) SCALE 88

of the law laid down by a two-Judge Bench, as there was a reference by a Division Bench expressing its doubt about the ratio laid down in ***Surya Dev Rai v. Ram Chander Rai and others***[23] that judicial orders passed by the Civil Court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under writ of certiorari, speaking through one of us (Adarsh Kumar Goel, J.), referred to number of judgments including some of the decisions we have cited hereinabove and reproduced the opinion expressed in ***Sadhana Lodh v. National Insurance Co. Ltd.***[24], which is to the following effect:-

> "6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd. v. Nicolletta Rohtagi*[25]). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the

[23] (2003) 6 SCC 675
[24] (2003) 3 SCC 524
[25] (2002) 7 SCC 456

> High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution."

15. After so stating, the three-Judge Bench referred to ***Surya Dev Rai*** (supra), the analysis made by the two-Judge Bench and ultimately came to hold thus:-

> "…. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing

from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above."

After so stating, the Court proceeded to hold as follows:-

"The Bench in *Surya Dev Rai* also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including *Waryam Singh and another vs. Amarnath and another* (supra), *Ouseph Mathai vs. M. Abdul Khadir*[26], *Shalini Shyam Shetty vs. Rajendra Shankar Patil*[27] and *Sameer Suresh Gupta vs. Rahul Kumar Agarwal*[28]."

The eventual conclusions read as follows:-

"23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a

[26] (2002) 1 SCC 319
[27] (2010) 8 SCC 329
[28] (2013) 9 SCC 374

private person not discharging any public duty. Scope of Article 227 is different from Article 226.

24. We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai* stands approved by larger Benches in *Shail, Mahendra Saree Emporium* and *Salem Advocate Bar Assn* and on that ground correctness of the said view cannot be gone into by this Bench. In *Shail*, though reference has been made to *Surya Dev Rai*, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium*, reference to *Surya Dev Rai* is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Bar Assn.* in para 40, reference to *Surya Dev Rai* is for the same purpose. We are, thus, unable to accept the submission of learned counsel for the respondent.

25. Accordingly, we answer the question referred as follows:

"(i) Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;

(ii) Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.

Contrary view in Surya Dev Rai is overruled."

16. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be

assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in ***Radhey Shyam*** (supra), which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.

17. The next aspect that has to be adverted to is under what situation, a Letters Patent Appeal is maintainable before a Division Bench. We repeat at the cost of repetition, we have referred to series of judgments of this Court which have drawn the distinction between Article 226 and 227 of the Constitution of India and the three-Judge Bench in ***Radhey Shyam*** (supra) has clearly stated that jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution and, therefore, a letters patent appeal or an intra-court appeal in respect of an order passed by the learned Single Judge dealing with an order arising out of a proceeding from a Civil Court would not lie before the Division Bench. Thus, the question next arises under what circumstances a

letters patent appeal or an intra-court appeal would be maintainable before the Division Bench.

18. In ***Umaji Keshao Meshram and Others v. Radhikabai and Another***[29], this Court has held thus:-

> "106. The non obstante clause in Rule 18, namely, "Notwithstanding anything contained in Rules 1, 4 and 17 of this chapter", makes it abundantly clear why that rule uses the words "finally disposed of". As seen above, under Rules 1 and 17, applications under Articles 226 and 227 are required to be heard and disposed of by a Division Bench. Rule 4, however, gives power to a Single Judge to issue rule nisi on an application under Article 226 but precludes him from passing any final order on such application. It is because a Single Judge has no power under Rules 1, 4 and 17 to hear and dispose of a petition under Article 226 or 227 that the non obstante clause has been introduced in Rule 18. The use of the words "be heard and finally disposed of by a Single Judge" in Rule 18 merely clarifies the position that in such cases the power of the Single Judge is not confined merely to issuing a rule nisi. These words were not intended to bar a right of appeal. To say that the words "finally disposed of" mean finally disposed of so far as the High Court is concerned is illogical because Rules 1, 4 and 7 use the words "be heard and disposed of by a Divisional Bench" and .were the reasoning of the Full Bench correct, it would mean that so far as the High Court is concerned, when a Single Judge hears a matter and disposes it of, it is finally disposed of and when a Division Bench disposes it of, it is not finally disposed of. The right of appeal against the judgment of a Single Judge is given by the Letters Patent which have been continued in force by

[29] 1986 (Supp) SCC 401

Article 225 of the Constitution. If under the Rules of the High Court, a matter is heard and disposed of by a Single Judge, an appeal lies against his judgment unless it is barred either under the Letters Patent or some other enactment. The word "finally" used in Rule 18 of Chapter XVII of the Appellate Side Rules does not and cannot possibly have the effect of barring a right of appeal conferred by the Letters Patent. As we have seen above, an intra-court appeal against the judgment of a Single Judge in a petition under Article 226 is not barred while clause 15 itself bars an intra-court appeal against the judgment of a Single Judge in a petition under Article 227.

107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque*[30] before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the

[30] (1955) 1 SCR 1104 : AIR 1955 SC 233

> order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singh*[31] and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass*[32] and *Barham Dutt v. Peoples' Cooperative Transport Society Ltd., New Delhi*[33] and we are in agreement with it."

19. Similar view was reiterated in ***Sushilabai Laxminarayan Mudliyar and others v. Nihalchand Waghajibhai Shaha and others***[34], which arose from the High Court of Bombay.

20. In ***Mangalbhai and Others v. Radhyshyam***[35] the dismissal of an application for eviction by the Deputy Collector and Rent Controller and its assail in appeal not resulting in success, compelled the landlord to file a writ petition under Articles 226 and 227 of the Constitution of India before the Bombay High Court. Before this Court, an objection was raised with regard to the maintainability of the letters patent appeal. This Court referred to the decision in ***Umaji Keshao Meshram case*** (supra) and opined as follows:-

> "6. Applying the correct ratio laid down in *Umaji Keshao Meshram case* (supra) and perusing the writ petition filed in the present case as well as the order passed by the learned Single Judge we

[31] AIR 1957 All 414 : 1957 All LJ 388 (FB)
[32] AIR 1959 Punj 291
[33] AIR 1961 Punj 24 : ILR (1961) 1 Punj 283
[34] 1993 Supp. (1) SCC 11
[35] (1992) 3 SCC 448

are clearly of the view that the present case clearly falls within the ambit of Article 226 of the Constitution. In *Umaji Keshao Meshram case* (supra) it was clearly held that:

> ."Where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226 …."

> **7.** The learned Single Judge in his impugned judgment dated December 11, 1987 nowhere mentioned that he was exercising the powers under Article 227 of the Constitution. The learned Single Judge examined the matter on merit and set aside the orders of the Rent Controller as well as the Resident Deputy Collector on the ground that the aforesaid judgments were perverse. The findings of the Rent Controller and Resident Deputy Collector were set aside on the question of habitual defaulter as well as on the ground of bona fide need. Thus in the totality of the facts and circumstances of the case, the pleadings of the parties in the writ petition and the judgment of the learned Single Judge leaves no manner of doubt that it was an order passed under Article 226 of the Constitution and in that view of the matter the Letters Patent Appeal was maintainable before the High Court."

21. In ***Lokmat Newspapers Pvt. Ltd. v. Shankarprasad***[36]**,** the controversy arose from the order passed by the Labour Court which had secured affirmation from the Industrial Tribunal. The said orders were challenged by the respondent

[36] (1999) 6 SCC 275

therein by filing a writ petition under Articles 226 and 227 of the Constitution of India before the High Court. The Court adverted to the facts and also the order passed by the learned Single Judge and in that context ruled:-

> "As seen earlier, he was considering the aforesaid writ petition moved under Article 226 as well as Article 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the respondent."

Thereafter, the learned Judges referred to the authority in ***Umaji Keshao Meshram*** (supra) and ruled:-

> "The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 (*sic* 227) of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge."

22. In ***Kishorilal v. Sales Officer, District Land Development Bank and Others***[37], a recovery proceeding was initiated by the respondent-Bank therein and the land mortgaged to the Bank were sold. An appeal preferred before the Joint Registrar, Cooperative Societies was dismissed and a further appeal was preferred before the Board of Revenue which interfered with the order passed by the Joint Registrar. The order passed by the Board of Revenue was called in question by the District Land Development Bank, which was allowed by the learned Single Judge. A letters patent appeal was preferred challenging the order of the learned Single Judge which opined that the order passed by the learned Single Judge was not maintainable as he had exercised the jurisdiction under Article 227 of the Constitution of India. Dealing with the maintainability of the appeal, the two-Judge Bench held that:-

> "The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High Court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Articles 226 and 227 of the Constitution of India as was held by this

[37] (2006) 7 SCC 496

Court in *Sushilabai Laxminarayan Mudliyar* v. *Nihalchand Waghajibhai Shaha*[38]."

23. In ***Ashok K. Jha and others v. Garden Silk Mills Ltd. and Another***[39], as the factual matrix would reveal, the employees had approached the Labour Court for certain reliefs. The Labour Court on consideration of the facts and law, declined to grant the relief. Being dissatisfied, the employees and the Union preferred a joint appeal before the Industrial Court, Surat which set aside the order of the Labour Court and issued certain directions against the employer. The employer called in question the defensibility of the order of the Industrial Court by filing a Special Civil Application under Article 226 and 227 of the Constitution of India before the High Court of Gujarat. The learned Single Judge dismissed the petition. Being grieved by the aforesaid order, a letters patent appeal was preferred under clause 15 of the Letters Patent. The Division Bench allowed the appeal and set aside the judgment and order passed by the learned Single Judge. A contention was raised before this Court pertaining to maintainability of letters patent appeal under clause 15 of the Letters Patent. R.M. Lodha, J. (as His Lordship then was)

[38] 1993 Supp (1) SCC 11
[39] (2009) 10 SCC 584

speaking for the Court, referred to the authorities in ***Umaji Keshao Meshram*** (supra), ***Ratnagiri Dist. Central Coop. Bank Ltd. v. Dinkar Kashinath Watve***[40], ***Ramesh Chandra Sankla v. Vikram Cement***[41] and stated thus:-

> "36. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra-court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers.
>
> 37. We agree with the view of this Court in *Ramesh Chandra Sankla* (supra) that a statement by a learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge."

24. At this juncture, we think it appropriate to reproduce a passage from ***Ramesh Chandra Sankla*** (supra) which has been quoted in ***Ashok Jha*** (supra). In the said case, the

[40] (1993) Supp (1) SCC 9
[41] (2008) 14 SCC 58

two-Judge Bench while dealing with the maintainability of letters patent appeal under clause 15 of the Letters Patent has ruled that:-

> "*47*. In our judgment, the learned counsel for the appellant is right in submitting that nomenclature of the proceeding or reference to a particular article of the Constitution is not final or conclusive. He is also right in submitting that an observation by a Single Judge as to how he had dealt with the matter is also not decisive. If it were so, a petition strictly falling under Article 226 simpliciter can be disposed of by a Single Judge observing that he is exercising power of superintendence under Article 227 of the Constitution. Can such statement by a Single Judge take away from the party aggrieved a right of appeal against the judgment if otherwise the petition is under Article 226 of the Constitution and subject to an intra-court/letters patent appeal? The reply unquestionably is in the negative…."

25. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in ***Radhey Shyam*** (supra) that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot

always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court

fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.

26. The next facet pertains to the impleadment of the Court or tribunal as a party. The special Bench has held that even if application is described as one not only under article 226 of the Constitution, but also under article 227, the Court or tribunal whose order is sought to be quashed, if not arrayed as a party, the application would not be maintainable as one of the relief of certiorari, in the absence of the concerned tribunal or Court as a party, cannot be granted. It has also been held that if the Court or tribunal has not been impleaded as party-respondent in the main writ petition, then by merely impleading such Court or tribunal for the first time in letters patent appeal would not change the nature and character of the proceeding before the learned Single Judge and, therefore, intra-court appeal would not be maintainable. To arrive at the said conclusion, the High Court has referred to ***Messrs. Ghaio Mal & Sons v. State of Delhi and others***[42], ***Hari Vishnu Kamath*** (supra) and relied upon a four-Judge Bench judgment in ***Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue***[43].

[42] AIR 1959 SC 65
[43] AIR 1963 SC 786

27. In ***Hari Vishnu Kamath*** (supra), after referring to the decision in ***T.C. Basappa*** (supra) and quoting a passage from Corpus Juris Secundum, Volume 14 at page 123, which deals with the nature of certiorari, it has been laid down:-

> "11. The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by 'certiorari', then the fact that the tribunal has become 'functus officio' subsequent to the decision could have no effect on the jurisdiction of the court to remove the record. If it is a question of issuing directions, it is conceivable that there should be in existence a person or authority to whom they could be issued, and when a 'certiorari' other than one to quash the decision is proposed to be issued, the fact that the tribunal has ceased to exist might operate as a bar to its issue. But if the true scope of 'certiorari' to quash is that it merely demolishes the offending order, the presence of the offender before the court, though proper, is not necessary for the exercise of the jurisdiction or to render its determination effective.
>
> 12. Learned counsel for the first respondent invites our attention to the form of the 'order nisi' in a writ of 'certiorari', and contends that as it requires the court or tribunal whose proceedings are to be reviewed, to transmit the records to the superior court, there is, if the tribunal has ceased to exist, none to whom the writ could be issued and none who could be compelled to produce the record. But then, if the writ is in reality directed against the record, there is no reason why it should not be issued to whosoever has the custody thereof. The following statement of the

law in *Ferris on the Law of Extraordinary Legal Remedies* is apposite:

> "The writ is directed to the body or officer whose determination is to be reviewed, or *to any other person having the custody of the record or other papers to be certified*.""

28. In ***Ghaio Mal & Sons*** (supra), the Court found a specific fact was not brought on record and evasive replies were filed which were wholly unconvincing. In that context, the Constitution Bench, speaking through S.R. Das, C.J. observed:-

> "... It is needless to say that the adoption of such dubious devices is not calculated to produce a favourable impression on the mind of the court as to the good faith of the authorities concerned in the matter. We must also point out that when a superior court issues a rule on an application for certiorari it is incumbent on the inferior court or the quasi-judicial body, to whom the rule is addressed, to produce the entire records before the court along with its return. The whole object of a writ of certiorari is to bring up the records of the inferior court or other quasi-judicial body for examination by the Superior Court so that the latter may be satisfied that the inferior court or the quasi-judicial body has not gone beyond its jurisdiction and has exercised its jurisdiction within the limits fixed by the law. Non-production of the records completely defeats the purpose for which such writs are issued, as it did in the present case before the High Court. We strongly deprecate this attempt on the part of the official respondents to bypass the court."

29. In ***Udit Narain Singh Malpaharia*** (supra), as the facts would demonstrate the counsel for the respondent therein raised a preliminary objection that the persons in whose favour the Board decided the petition had not been made parties before the High Court. Be it noted, in the said case a country liquor shop was settled in favour of the appellant therein. After expiry of the said licence, it was renewed in his favour in 1962 which was called in question by one Phudan Manjhi before the Deputy Commissioner for substituting his name in place of his father on the basis of the lot drawn in favour of his father. The Deputy Commissioner rejected the same which was assailed by Phudan Manjhi before the Commissioner of Excise who remanded the case to the Deputy Commissioner to consider the fitness of Phudan Manjhi to get the license and to consider his claim on certain parameters. One Bhagwan Rajak, who was not an applicant before the Deputy Commissioner, filed an application before the Commissioner alleging that there should have been fresh advertisement for the settlement of the shop. The Commissioner allowed his application and directed the Deputy Commissioner to take steps for fresh settlement of the shop in

accordance with the rules. The said order was assailed before the Board of Revenue which dismissed the petition and directed that unless the Deputy Commissioner came to a definite conclusion that Phudan Manjhi was unfit to hold licence, he should be selected as a licensee in accordance with rules. As a result of the said proceedings, the appellant's licence stood cancelled and the Deputy Commissioner was directed to hold a fresh settlement giving preferential treatment to Phudan Manjhi. A writ petition was filed under Article 226 of the Constitution before the High Court for quashment of the said orders and before the writ court neither Phudan Manjhi nor Bhagwan Rajak in whose favour the Board of Revenue had decided was made a party. During the pendency of an appeal before this Court, the Deputy Commissioner had conducted an enquiry and come to the conclusion that Phudan Manjhi was not fit to be selected for grant of licence and he was waiting for making a fresh settlement. In course of hearing of the appeal, a preliminary objection was raised by the learned counsel for the respondent that as Phudan Manjhi and Bhagwan Rajak who were necessary parties to the writ petition were not made parties,

the High Court was justified in dismissing the writ petition *in limini*. This Court accepted the preliminary objection holding that the law on the subject is well settled that a person who is a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but his presence is necessary for complete and final decision on the question involved in the proceeding. After so stating, the four- Judge Bench proceeded to deal with the nature of writ of certiorari and reproduced a passage from ***King v. Electricity Commissioners***[44], which is as follows:-

> "8. "....Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."
>
> Lord Justice Slesser in *King* v. *London County Council*[45] dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (*1*) having legal authority (*2*) to determine questions affecting rights of subjects and (*3*) having the duty to act judicially (*4*) act in excess of their legal authority — a writ of certiorari may issue." It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or

[44] 1924 1 KB
[45] (1931) 2 KB 215, (243)

quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, *ex hypothhesi* it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority: in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it

will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition."

Thereafter, the Court proceeded to lay down thus:-

"9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved

> in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a parry or such a party may suo motu approach the court for being impleaded therein."

After so stating, the four-Judge Bench referred to English practice as recorded in *Halsbury's Laws of England, Vol. 11, 3rd Edn. (Lord Simonds')* and a Division Bench judgment of the Bombay High Court in ***Ahmedalli v. M.D. Lalkaka***[46] and a Full Bench decision of Nagpur High Court in ***Kanglu Baula v. Chief Executive Officer***[47] and summarized thus:

> "To summarise: in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

30. The High Court, as we find, relied on the aforesaid decision to form the foundation that unless a Court or a tribunal is made a party, the proceeding is not maintainable. What has been stated in ***Hari Vishnu Kamath*** (supra), which

[46] AIR 1954 Bom 33, 34
[47] AIR 1955 Nag. 49

we have reproduced hereinbefore is that where plain question on issuing directions arises, it is conceivable that there should be in existence a person or authority to whom such directions could be issued. The suggestion that non-existence of a tribunal might operate as a bar to issue such directions is not correct as the true scope of certiorari is that it merely demolishes the offending order and hence, the presence of the offender before the Court, though proper is not necessary for the exercise of the jurisdiction or to render its determination effective.

31. In ***Udit Narain Singh*** (supra), the fulcrum of the controversy was non-impleadment of the persons in whose favour the Board of Revenue had passed a favourable order. There was violation of fundamental principles of natural justice. A party cannot be visited with any kind of adverse order in a proceeding without he being arrayed as a party. As we understand in ***Hari Vishnu Kamath*** (supra), the seven-Judge Bench opined that for issuance of writ of certiorari, a tribunal, for issue of purpose of calling of record, is a proper party, and even if the tribunal has ceased to exist, there would be some one incharge of the tribunal from whom

the records can be requisitioned and who is bound in law to send the records. The larger Bench has clearly stated that while issuing a writ of certiorari, the Court merely demolishes the defending order, the presence of the offender before the Court though proper but is not necessary for exercise of jurisdiction. The said finding was recorded in the context of a tribunal.

32. In this context, we may profitably refer to the decision in ***Savitri Devi*** (supra) wherein a three-Judge Bench, though in a different context, had observed thus:-

> "Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties

> to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice."

33. The High Court after referring to the controversy involved in ***Savitri Devi*** (supra) has opined thus:-

> "In our opinion, the observations of the Supreme Court pertained to the judicial officers being made parties in the proceedings as against a person, authority or a State being made a party in a petition under Article 226 and a Court or a Tribunal not being so required in a petition under Article 227 of the Constitution of India."

After so stating, the High Court has proceeded to express the view that it is not a binding precedent and thereafter opined:-

> "We are of the opinion that although in Hari Vishnu Kamath (supra), the Supreme Court may have observed that the presence of the Tribunal would be proper yet may not be necessary for the exercise of the jurisdiction or to render its determination effective, but the said principle has been more elaborately explained and made clear by the Supreme Court in *Udit Narain* (supra) laying down as an absolute proposition of law that no writ could be issued under Article 226 of the Constitution without the Tribunal, whose order is sought to be impugned, is made a party respondent."

34. As we notice, the decisions rendered in ***Hari Vishnu Kamath*** (supra), ***Udit Narain Singh*** (supra) and ***Savitri***

Devi (supra) have to be properly understood. In ***Hari Vishnu Kamath*** (supra), the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In ***Udit Narain Singh*** (supra), the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In ***Savitri Devi*** (supra), the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case has to be understood in proper perspective. Civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite few

examples; the tribunals constituted under the Administrative Tribunals Act, 1985, the Custom, Excise & Service Tax Appellate Tribunal, the Income Tax Appellate Tribunals, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give another example:- in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ

may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable.

35. We have stated in the beginning that three issues arise despite the High Court framing number of issues and answering it at various levels. It is to be borne in mind how the jurisdiction under the letters patent appeal is to be exercised cannot exhaustively be stated. It will depend upon the Bench adjudicating the lis how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straight-jacket formula for the same. Needless to say, the High Court while exercising jurisdiction under Article 227 of the Constitution has to be guided by the parameters laid down by this Court and some of the judgments that have been referred to in ***Radhey Shyam*** (supra).

36. In view of the aforesaid analysis, we proceed to summarise our conclusions as follows:-

(A) Whether a letters patent appeal would lie against the order passed by the learned Single Judge that has travelled to him from the other tribunals or authorities, would depend upon many a facet. The Court fee payable on a petition to make it under Article 226 or Article 227 or both, would depend upon the rules framed by the High Court.

(B) The order passed by the civil court is only amenable to be scrutinized by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India which is different from Article 226 of the Constitution and as per the pronouncement in ***Radhey Shyam*** (supra), no writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable.

(C) The writ petition can be held to be not maintainable if a tribunal or authority that is required to defend the impugned order has not been arrayed as a party, as it is a necessary party.

(D) Tribunal being or not being party in a writ petition is not determinative of the maintainability of a letters patent appeal.

37. Having recorded our conclusions in seriatim, we think it appropriate that the matters should be remanded to the High Court to be heard by the Division Bench in accordance with the principles laid down in this judgment and accordingly we so direct. Resultantly, with the modifications in the order of the High Court, the appeals stand disposed of. There shall be no order as to costs.

.....J.
[Dipak Misra]

..... J.
[Adarsh Kumar Goel]

New Delhi
July 6, 2015