

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 47/2023
CM No. 1773/2023
Caveat No. 374/2023

Reserved on :10.04.2023
Pronounced on : 25.04.2023

Rajinder Singh Manhas

.... Petitioner/Appellant(s)

Through:- Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Amit Gupta, Advocate

V/s

Anil Gaiind & anr.

.....Respondent(s)

Through:- Mr. Rohit Kohli, Advocate for caveator

CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

GIST

01. Petitioner through the medium of present petition is calling in question the order dated 22nd February, 2023 passed by the Court of learned 1st Additional District Judge, Jammu by invoking the powers of this Court under Article-227 of the Constitution of India by virtue of which, the application filed by the petitioner seeking condonation of delay in filing the written statement has been dismissed with a further prayer to direct the aforesaid Court to take on record the written statement of the petitioner and adjudicate the matter on merits.

BRIEF FACTS OF THE CASE

02. Respondents have filed a suit against the petitioner whereby they have sought specific performance of the agreement/memorandum

of understanding dated 23.10.2017 duly entered and executed between the petitioner and respondents herein. An application came to be preferred during the pendency of the aforesaid suit before the Court of 1st Additional District Judge, Jammu by the applicant/petitioner herein, who has sought condonation of delay in filing the written statement in the aforesaid suit on the ground that the petitioner herein has been served by the aforesaid Court in the month of January, 2022 and however, in the month of January, 2022, the grandmother of the applicant/petitioner herein died and thereafter, the mother of the applicant, who was an old aged lady and was suffering from various ailments became sick and accordingly, the applicant, who is the only son, had to remain with his mother and had to go for her treatment out of station.

03. It has also been averred in the application filed by the petitioner that the father of the petitioner had already expired and mother of the petitioner was totally dependent upon him and due to her bad health, the petitioner could not attend the Court proceedings and accordingly, could not reach to his counsel for preparation of the written statement before the Court below. Thus, the petitioner while filing the aforesaid application has submitted that the delay was neither intentional nor deliberate and accordingly, prayed before the Trial Court that a lenient view be taken in favour of the applicant and the written statement be taken on record.

04. From the perusal of the record, it is apparent that on the presentation of the said application, notice was issued to the non-applicants/respondents herein for filing objections, who appeared through their counsel and filed objections to aforesaid application. The respondents took objection to the maintainability of the aforesaid application seeking condonation of delay for filing the written statement as according to the respondents herein, there is no provision for condoning the delay and accordingly, sought dismissal of the application. Since the applicant has filed the written statement after the expiry of period of limitation on 02.06.2022 and the applicant had failed to annex any document in order to substantiate the death of the grandmother and illness of the mother and accordingly, it was prayed that the aforesaid act of the applicant in filing the aforesaid application was with a view to delay the proceedings and accordingly, sought dismissal of the said application.

05. The specific objection was taken by the defendants that the applicant has failed to annex any document to substantiate the cause set out in the application for filing the written statement beyond the period of 120 days and, thus, the delay cannot be condoned. The Court below after having considered the rival submissions of both the sides and perusing the record and legal provisions touching the matter in controversy, dismissed the application seeking condonation of delay being devoid of merits by holding that there being statutory compulsion to file written statement within 120 days and applicant/defendant having failed to do so, as such, the application for condonation of delay which was found to be devoid of merits and was

dismissed and consequently, the written statement filed along with the application was not taken on record by holding that the applicant (petitioner herein) has forfeited his right to file the written statement. Feeling aggrieved of the same, the petitioner has filed the present petition under Article-227 of the Constitution of India challenging the order passed by the 1st Additional District Judge, Jammu dated 22nd February, 2023.

LEGAL ANALYSIS

06. Heard learned counsel for the petitioner, Mr. M. K. Bhardwaj, Senior Advocate along with Mr. Amit Gupta, Advocate and Mr. Rohit Kohli, learned counsel for the caveators and perused the record. Caveat stands **discharged**.

07. From perusal of the record and order passed by the learned Court below which is impugned in the present petition, it is apparently clear that the plaintiffs/respondents herein have filed a suit against the defendant/petitioner herein on 01.01.2022 whereupon the summons were issued to the defendant. The record further reveals that the defendant was served on 06.01.2022 and caused appearance through his counsel on 02.06.2022 and despite service, filed an application seeking condonation of delay in filing the written statement on 04.07.2022 along with the written statement which was objected by the non-applicant/respondents herein.

08. With a view to appreciate the controversy in question, it would be apt to reproduce S.O. 1123 (E) of 2020 dated 18th March, 2020 which has been substituted by the Jammu & Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020. The Scheduled S. No. 8., amended proviso is reproduced as under :-

“Provided that where the defendant fails to file the written Statement with the sad period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

09. The Trial Court while passing the order impugned dated 22nd February, 2023 had considered the various orders passed by the Hon’ble Apex Court because of the peculiar situation created due to outbreak of pandemic due to Covid-19. The Hon’ble Apex Court has held that in case where limitation period would have expired during the period between 15th March, 2020 till 28th February, 2022, notwithstanding actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1st March, 2022. In the event, the actual balance period remaining with effect from 1st March, 2020 is greater than 90 days that longer period shall apply.

10. After the abrogation of Article 370 in August, 2019, Civil Procedure Code, 1908 was made applicable to the Union Territory of Jammu and Kashmir as well and in terms of S.O. 1123 (E) of 2020 dated 18th March, 2020, certain amendments have been brought in the Civil Procedure Code, 1908, so far as its applicability to the Union Territory of Jammu & Kashmir is concerned. In terms of S.O. 1123 (E) of 2020 dated 18th March, 2020, maximum period of 120 days was available to the defendant to file the written statement failing which it was made clear that the defendant will forfeit the right to file written statement and the Court by no stretch of imagination shall

allow the written statement to be taken on record. A comparative analysis of relevant provision of Civil Procedure Code, 1908 as applicable to the rest of the India, Commercial Courts Act & Civil Procedure Code, 1908 as applicable to the to the Union Territory of Jammu & Kashmir is given below:-

Civil Procedure Code, 1908 applicable to whole India except UT of J&K	Commercial Courts Act	Civil Procedure Code, 1908 applicable to UT of J &K in terms of S.O. 1123 (E) of 2020 dated 18th March, 2020
<p>Order VII:-</p> <p>1. The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.</p> <p>Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]</p>	<p><u>Section 16</u></p> <p>Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes</p> <p>(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.</p> <p><u>Schedule</u></p> <p>(D) in Order VIII,-</p> <p>(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely:-</p> <p>"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on Payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."</p>	<p>(C) in Order VIII,-</p> <p>i) in Rule 1, for the proviso thereto, substitute the following proviso, namely,</p> <p>"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."</p>

11. From bare perusal of the aforesaid table, it is emphatically clear that the provisions of the Commercial Courts Act, whereby, the limitation period of 120 days has been prescribed for filing the written statement has been held to be mandatory by the Hon'ble High Court of Delhi in its judgment titled **Oku Tech Private Limited vs Sangeet Agarwal & ors.** reported as **MANU/DE/2036/2016** For facility of reference, relevant portion of the judgment is reproduced as under:-

"8. The amendments to the CPC brought out by the Schedule to the Act seek to fill the above gap, as it were, in the CPC. The substituted second proviso to Order V Rule 1 and the substituted proviso to Order VIII Rule 1 place an outer limit of 120 days from the date of service of summons up to which the Court can grant time to file written statement. It categorically states that "on expiry of 120 days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record." This is re-emphasised by inserting a proviso to Order VIII Rule 10 CPC, which after such insertion, reads as under:

"10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order as relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

9. Therefore, it is plain that the above amendment reflects the legislative intent to take away the discretion of the Court in extending the time for filing the written statement.

13. For the aforementioned reasons, the Court declines the prayer for condonation of delay in Defendants 1, 3 and 5 filing their written statement."

12. Even the Hon'ble Apex Court of the Country has also held that the period of 120 days prescribed for filing written statement is mandatory and the Court has no power to extend the same. Reliance is also placed on a judgment titled **M/s SCG Contracts India Pvt. Ltd. vs. K. S. Chamankar Infrastructure Pvt. Ltd. & ors.** reported as **2019 12 SCC 2010**. Relevant part of the judgment is reproduced as under:-

“A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. [See *Oku Tech Private Limited vs. Sangeet Agarwal & Ors.* by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics vs. Oasis Commercial Pvt. Ltd.* 2018 SCC Online Del 6698.

We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.

We are of the view that since both these judgments dealt with the pre-amendment position, they would not be of any direct reliance insofar as the facts of the present case is concerned.”

13. I am also fortified by the law laid down by the Hon’ble Apex Court in case titled **Desh Raj Vs. Balkishan (D) through proposed LR Ms. Rohini** reported as **2020 2 SCC 708**, wherein it has been observed as under:-

“The appellant’s primary contention is that the reliance on *Oku Tech (supra)* was erroneous as it was rendered in light of Order VIII Rule 1 of CPC as amended by the Commercial Courts Act, 2015 which in turn was applicable to commercial disputes only. The present matter was highlighted as being noncommercial, and it was urged that the unamended Order VIII Rule 1 of CPC would be applicable, wherein no consequences for not complying with the shorter timeline of 90 days has been provided. This provision, it was contended, was merely procedural and concomitantly directory as held by this Court in various decisions including *Salem Advocate Bar Association, T. N. v. Union of India, 2005 (3) RCR (Civil) 530: (2005) 6 SCC 344*

Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure. Whereas commercial disputes [as defined under Section 2(c) of the Commercial Courts Act, 2015] are governed by the CPC as amended by Section 16 of the said Act; all other noncommercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in [SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd.](#), 2019 (2) RCR (Civil) 249: AIR 2019 Supreme Court 2691 but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute qua the amended Order-VIII Rule-1 CPC.”

14. The language of the provisions of the Commercial Court’s Act where the period of 120 days has been prescribed for filing the written statement has been held to be mandatory by the Hon’ble Apex Court. However, by way of amendment in terms of S.O. 1123 (E) of 2020 dated 18th March, 2020, the same language has been incorporated in Civil Procedure Code, 1908 so far as its applicability to the Union Territory of Jammu and Kashmir is concerned which is evident from the bare perusal of the aforementioned table.

15. The law which has been laid down by the Hon’ble Apex Court with respect to Commercial Courts Act has been held to be mandatory because of the consequence for non-compliance cannot change its character because of its incorporation in Civil Procedure Code, 1908, so far as its applicability to the Union Territory of Jammu and Kashmir is concerned. The fact whether the suit is commercial or non-commercial, it does not make any difference because the language used in the Commercial Courts Act is *pari metaria* to Civil Procedure Code, 1908, so far as its applicability to the Union Territory of Jammu and Kashmir is concerned with particular reference to S.O. 1123 (E) of 2020 dated 18th March, 2020. Thus, applying the ratio of the judgment rendered by the Hon’ble Apex Court for excluding the limitation period during Covid-19 pandemic, the defendant(petitioner herein) was bound to file written statement after excluding of the period of limitation on or before 18th

June, 2022 because in the light of the Jammu & Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 and S.O. 1123 (E) of 2020 dated 18th March, 2020, whereby the Order-VIII Rule-1 CPC was amended and period of filing the written statement was fixed as 120 days, failing which, it was emphatically made clear that defendant shall forfeit the right to file the written statement and the Court by no stretch of imagination shall allow the written statement to be taken on record.

16. Undisputably, the defendant before the Trial Court has filed the written statement on 4th July, 2022 which is beyond the period of limitation prescribed under Order-VIII Rule-1 CPC applicable to the Union Territory of Jammu and Kashmir and rightly so, the Court below has held that it cannot extend period further 120 days in allowing the written statement to be taken on record. Besides, the Court below has also held that the disability suffered by the defendant in filing written statement within the time prescribed, no sufficient cause has been set out for filing the written statement and nothing has been placed on record to substantiate the grounds urged in the application seeking condonation of delay with regard to illness of his mother.

17. *Per Contra* Mr. M. K. Bhardwaj, learned senior counsel, has relied upon the judgment passed by the Hon'ble Apex Court in **Kailash Vs. Nanhku & ors.** reported as **2005 for SCC 480** is not applicable to the facts of the present case.

18. Ordinarily, the written statement is to be filed within a period of 30 days, however, grace period of further 90 days is granted which the Court may specify the reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of

great importance is the fact that beyond 120 days from the date of service of summons, defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso to S.O. 1123 (E) of 2020 dated 18th March, 2020 which has been made applicable to the Union Territory of Jammu and Kashmir and a perusal, whereof, reveals that the Court has no power to extend the time beyond the period of 120 days.

19. The amendment to the Civil Procedure Code which has been brought out by the Schedule to the Act seek to fill the gap which was existing in Civil Procedure Code and substituted 2nd proviso to Order-5 Rule-1 and the substituted proviso to Order-VIII Rule-1 which is *pari materia* to S.O. 1123 (E) of 2020 dated 18th March, 2020 which has been made applicable to the Union Territory and provides an outer limit of 120 days from the date of service of the summons up to which the Court can grant time to file written statement. It categorically states that **“on expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record.”**

20. Therefore, it can safely be concluded that the aforesaid amendment which has been carried out with respect to the Commercial Courts Act and S.O. 1123 (E) of 2020 dated 18th March, 2020, **after abrogation reflects the legislative intent** to take away the discretion of the Court in extending the time for filing the written statement and this aspect of the matter has already been dealt in detail by Delhi High Court in **Oku Tech. Pvt. Ltd. & ors. (supra)** and upheld by the Hon’ble Supreme Court in **M/s SCG Contracts**

India Pvt. Ltd. vs. K. S. Chamankar Infrastructure Pvt. Ltd. & ors. (supra), wherein the Hon'ble Supreme Court has held **that the view taken by the Delhi High Court in Oku Tech Private Limited is correct in view of the fact that the consequence of forfeiting a right to file written statement, non-extension of any further time and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order Rule-1 on filing of the written statement under Order-VIII Rule-1 has now been set at naught.**

21. The Commercial Courts Act, 2015 through Section 16 has amended the Civil Procedure Code in its application to the commercial disputes, which provides as under :

“Section 16.

Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

22. Thus, it is clear that the post coming into force of the aforesaid Act, there are two regimes of Civil Procedure. Whereas commercial disputes (as defined under Section 2-C of the Commercial Courts Act, 2015) are governed by the CPC as amended by Section 16 of the said Act, all other non-

commercial disputes fall within the ambit of unamended, (or original) provisions of CPC.

23. The judgment of **Oku Tech Private Limited vs Sangeet Agarwal & ors.** is good law and holds the field which has been reiterated and upheld by the Hon'ble Apex Court in **M/s SCG Contracts India Pvt. Ltd. vs. K. S. Chamankar Infrastructure Pvt. Ltd. & ors.** The ratio and the principles laid down in the aforesaid judgments reflects the mandatory nature of the timeline prescribed for filing written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes. Since Commercial Courts Act, through section 16 has amended the CPC in its application to the commercial disputes is *pari materia* to Civil Procedure Code, 1908 applicable to the UT of Jammu and Kashmir in terms of S.O. 1123 (E) of 2020 dated 18th March, 2020, the principle and law laid down in **Oku Tech Private Limited (supra)** and upheld in **M/s SCG Contracts India Pvt. Ltd. (supra)**, is applicable to the facts of the present case and rightly so, there being statutory compulsion to file written statement within 120 days and defendant having failed to do so, the Trial Court has dismissed the application for condonation of delay being devoid of any merit. As a necessary corollary, the written statement was not taken on record as the defendant has forfeited his right to file the written statement.

24. This writ petition has been filed under Article 227 of the Constitution of India. It is settled position of law that the High Court under Article 227 of the Constitution of India exercises power of superintendence over all the Courts and Tribunals throughout the territories in relation to which, it exercises jurisdiction.

25. The power of superintendence is not to be exercised unless there has been;

- (a) *An unwarranted assumption of jurisdiction, not vested in a court or tribunal; or*
- (b) *gross abuse of jurisdiction; or*
- (c) *an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.*

26. Judicial pronouncements as to the object and scope of power of the High Courts under Article 227 of the Constitution would leave little scope to interfere with the orders of subordinate courts as a matter of routine. This power cannot be taken as a right of another Appeal to the aggrieved party. Nor this power can be invoked to point out an error of law or fact in the Order or judgment/decision of Subordinate Court as has been asserted by petitioner in the case in hand. This power cannot be used to make out that the decision of the Subordinate Court could have been or must have been other than what it is. The High Courts in exercise of its power under Article 227 of the Constitution should interfere with the Trial Court orders only to keep Tribunals and Courts subordinate to it, '**within the bounds of their authority**' and to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction vested in them and not declining to exercise the jurisdiction which is vested in them.

27. Further, the judgment rendered by the Hon'ble Apex Court in the case of **Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi**, reported in (1995) 6 SCC 576 it has been laid down that the High Court under **Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions.** It must be restricted to cases of grave dereliction of duty and flagrant abuse of

fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

28. The Supreme Court in **Surya Dev Rai v. Ram Chander Rai**, (2003) 6 SCC 675, after discussing ambit of powers vested in the High Court under Article 227 of the Constitution, has laid down certain propositions, including that *“supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction, which it does have or the jurisdiction, though available, is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. The Supreme Court cautioned that be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law. The Supreme Court has also laid down that care, caution and circumspection need to be exercised and the High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. However, the Hon'ble Supreme Court in Radhey Shyam v. Chhabi Nath (2015 AIR SCW 1849), has taken a different view from one that was taken in Surya Dev Rai's case (supra) concerning jurisdiction of the High Courts under Article 226 and 227 of the Constitution of India, against the judicial order of Civil Court. The Hon'ble Supreme Court, while deciding the question referred to in Radhey Shyam's case (supra), held that judicial orders*

of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 of the Constitution is distinct from jurisdiction under Article 226 of the Constitution of India. The contrary view taken in Surya Dev's case has, thus, been overruled. However, the position qua jurisdiction of the High Court under Article 227 of the Constitution, elaborately dealt with in Surya Dev Rai's case, has not been changed.

29. Article 227 of the Constitution, which the learned counsel for the petitioner, has relied upon, vests the High Courts with the power of superintendence over the subordinate courts and Tribunals within their respective jurisdictions. The extent and scope of jurisdiction vested in the High Court under Article 227 of the Constitution was considered by the Supreme Court in the case of **Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616**. The Court, while doing so, held that the said Article vests the High Courts with a power of superintendence which is to be exercised very sparingly to keep tribunals and courts within bounds of their authority. It was further held that under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage has been occasioned and that such power is not to be exercised to correct a mistake of fact and of law.

30. It is well settled by the decision of this Court in **Waryam Singh v. Amarnath [AIR 1954 SC 215]** that the “*power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193], to be exercised most sparingly*

and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors”.

31. I am fortified by the decision of the Hon’ble Supreme Court in **Sadhana Lodh Versus National Insurance Co. Ltd. and another** reported as **(2003) 3 SCC 524**:

‘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.’

32. In **Shalini Shyam Shetty vs Rajendra Shankar Patil** reported as **(2010) 8 SCC 329**, the Hon’ble Supreme Court has observed as under:

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

67. As a result of frequent interference by the Hon’ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon’ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly.

33. The Hon’ble Supreme Court in **Estralla Rubber Versus Dass Estate (P) Ltd.** reported as **(2001) 8 SCC 97** has held:-

‘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.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand in AIR 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. This Court in Bathutmal Raich and Oswal v. Laxmibai R. Tarte 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.'

CONCLUSION

34. In light of the aforesaid settled legal position, coupled with the peculiar facts and circumstances of the case, I uphold the order passed by the 1st Additional District Judge, Jammu dated 22nd February, 2023 as the same does not suffer from any legal infirmity and the present petition which is devoid of any merit deserves dismissal at very threshold and is, accordingly, **dismissed** for the reasons stated hereinabove.

(Wasim Sadiq Nargal)
Judge

JAMMU
25.04.2023
RAM MURTI

Whether the judgment is reportable ?	Yes
Whether the judgment is speaking ?	Yes