

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10th August, 2021.**

+ **CM(M) 132/2021 & CM No.5689/2021 (FOR STAY)**

**BLACK DIAMOND TRACKPARTS PVT.
LTD. & ORS.**

..... Petitioners

Through: Mr. Praveen Chaturvedi, Adv.

Versus

BLACK DIAMOND MOTORS PVT. LTD. ... Respondent

Through: Mr. Amarjit Singh Chandhiok, Sr.
Advocate with Ms. Rohini Musa, Mr.
Nipun Katyal, Mr. Rushab Aggarwal
and Mr. Tejasvi Chaudhary, Adv.

AND

+ **CM(M) 225/2021 & CM NO.10177/2021 (FOR STAY)**

IMTIYAZ SHEIKH

..... Petitioner

Through: Mr. Shankar Datt Gahtori, Mr.
Dushyant Nayak, Mr. Kapil Payla,
Mr. Latesh Kumar and Mr. Vijay
Datt Gahtori, Adv.

versus

PUMA SE

..... Respondent

Through: Mr. Rajan Narula, Mr. Shashi P.
Ojha & Ms. Payal Kalhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

1. These two petitions, both under Article 227 of the Constitution of India, though unrelated to each other, on merits or qua parties, were clubbed together for the reason of entailing certain common questions of law.

2. CM(M) No.132/2021 was filed, impugning the order dated 25th September, 2021 of the District Judge (Commercial)-01, South District, Saket Courts, New Delhi in CS(COMM) No.184/2020, of dismissal of the application of the petitioners / defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). The said suit was filed by the respondent / plaintiff for permanent injunction, to restrain the petitioners / defendants from passing off their goods as that of the respondent / plaintiff and for ancillary reliefs. The petitioners / defendants applied for rejection of the plaint in the said suit, on the ground of the Courts at Delhi not having territorial jurisdiction to entertain the suit and on the ground of the reliefs claimed in the suit being barred by res judicata. Vide the impugned order, the said application was dismissed.

3. CM (M) No.225/2021 was filed, impugning the order dated 29th January, 2021 of the District Judge (Commercial), South East, Saket, New Delhi in CS(COMM) No.323/2019, of dismissal of the application of the petitioner / defendant under Order VIII Rule 1 of the CPC for condonation of delay in filing the written statement. The said application was dismissed vide the impugned order, on the ground that the Commercial Courts, under the law have no power to extend the period of 120 days for filing the written statement.

4. Both the petitions, as per the roster of this Court, were listed before a Single Judge of this Court and notice of both the petitions was ordered to be issued. However vide order dated 27th May, 2021 in CM (M) No.132/2021 and vide order dated 21st May, 2021 in CM (M) No.225/2021, following the judgment dated 27th January, 2021 in FAO No.232/2020 titled *Delhi*

Tourism and Transportation Development Corporation Vs. Swadeshi Civil Infrastructure Pvt. Ltd., holding that per Section 13(1A) of the Commercial Courts Act, 2015, the appeals against a judgment / order of the Commercial Court at the level of District Judge exercising Original Civil jurisdiction, appeals lie to the Commercial Appellate Division, the Single Judge before which these petitions were pending, ordered these petitions to be placed before the Commercial Appellate Division of this Court. Accordingly, the petitions were listed before this bench.

5. Before proceeding further, we may notice that *Delhi Tourism and Transportation Development Corporation* supra was pronounced in an appeal preferred against the orders of the District Judge (Commercial) and which appeal, notwithstanding Section 13(1A) supra of the Commercial Courts Act was erroneously listed before a Single Judge of this Court. All that the said judgment did was, to have the appeal placed before the Commercial Appellate Division.

6. CM (M) No.132/2021 came up first before this Bench, exercising powers as Commercial Appellate Division, on 28th May, 2021 when the counsels were asked to address on the following two questions:

“(i) whether after coming into force of the Commercial Courts Act, 2015, a petition under Article 227 of the Constitution of India lies with respect to non-appealable orders of the Commercial Courts.

(ii) if the answer to the above is in the affirmative, whether the said petition is to be considered by a Single Judge of this Court or, on a parity of the jurisdiction for hearing appeals being of a Commercial Division (sic for Commercial Appellate Division) of this Court, by a Commercial Division (sic for Commercial Appellate Division) of this Court.”

7. CM (M) No.225/2021 came up first before this Bench on 28th May, 2021, when the counsels were asked to address us, besides on the aforesaid two questions, also on:

“(iii) when were the Commercial Courts constituted in the District Court and whether the suit from which this appeal arises was instituted prior or after thereto.

(iv) whether the petitioner is deemed to have been served with the summons of the suit only on 19th September, 2019, when the complete copy of the plaint and documents was furnished to the counsel for the petitioner before the Commercial Court and if so, whether the delay till 11th December, 2019 in filing the written statement was of 54 days only.”

8. We heard the counsels / senior counsel on 27th July, 2021 and on 3rd August, 2021 and reserved orders/judgments.

9. The question of maintainability of a petition under Article 227 of the Constitution of India, with respect to proceedings in a commercial suit before the District Judge (Commercial) arose, because Section 8 of the Commercial Courts Act as under:

“8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

expressly bars the remedy of “civil revision application or petition”. It was deemed apposite to hear the counsels on, whether by use of the word “petition” in addition to the words “civil revision application”, though with a “or” between them, the purport of Section 8 supra was to also bar the

remedy of Article 227 petition with respect to proceedings in a commercial suit at the level of the District Judge. The remedy under Article 227 of the Constitution of India, it was felt, was similar / identical / at par with the remedy of a civil revision application under Section 115 of the CPC and it was thus deemed appropriate to frame the question no.(i) aforesaid and hear the counsels thereon. Similarly, it was deemed apposite to hear the counsels on the reasoning which prevail with the Single Judge, that since appeals against orders in a commercial suit at the level of the District Judge are to be heard by the Commercial Appellate Division, petitions under Article 227, if maintainable, emanating from proceedings in such suits should also be heard by the Commercial Appellate Division. Accordingly, question no.(ii) aforesaid was framed.

10. The senior counsel for the respondent in CM (M) No.132/2021, in our view, has rightly contended and none of the other counsels have controverted, that the remedy under Article 227 being a constitutional remedy could not be affected by a statute framed by a legislature which was itself a creature of constitution. A creature of the Constitution of India cannot act in negation of the provisions of the Constitution of India. We are reminded of *Surya Dev Rai Vs. Ram Chander Rai* (2003) 6 SCC 675, concerned with the impact of the amendment in Section 115 of the CPC brought about by the amendment of the CPC with effect from 1st July, 2002. In the wake of the said amendment, a question arose, whether on such amendment restricting / limiting the orders of the subordinate courts with respect to which a revision application under Section 115 of the CPC could be preferred to the High Court, an aggrieved person was completely deprived of the remedy of judicial review under Article 227 also. It was

held, that curtailment of revisional jurisdiction of the High Court did not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor was the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further held that the said power continued to exist, untrammelled by the amendment in Section 115 CPC and remained available to be exercised, subject to the rules of self-discipline and practice, which were well settled. Similarly, in *State of Gujarat Vs. Vakhatsinghji Vajesinghji, Vaghela* AIR 1968 SC 1481, *Jetha Bai and Sons, Jew Town, Cochin Vs. Sunderbas Rathenai* (1988) 1 SCC 722, *State of H.P. Vs. Dhanwant Singh* (2004) 13 SCC 331 and *Union of India Vs. Major General Shri Kant Sharma* (2015) 6 SCC 773 it was held that the legislature cannot take away the power of superintendence of the High Court under Article 227 of the Constitution over all Courts and Tribunals which are within the territories in relation to which the High Court exercises its jurisdiction. Rather, in *L. Chandra Kumar Vs. Union of India* (1997) 3 SCC 261, judicial review including under Article 227, was held to be a basic feature of the Constitution, even beyond the realm of amendability and Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent excluded the jurisdiction of the High Court and Supreme Court under Articles 226/227 and 32 of the Constitution with respect to matters falling within the jurisdiction of the Courts and Administrative Tribunals referred to therein, were held to be unconstitutional.

11. Thus, the question no.(i) aforesaid is answered by holding that the petition under Article 227 of the Constitution of India to the High Court

with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court has not been and could not have been affected in any manner whatsoever by Section 8 of the Commercial Courts Act. The use of the word “petition” in Section 8 is not and could not have been with reference to a petition under Article 227 of the Constitution and is with reference to a revision application / revision petition only.

12. That brings us to the question no.(ii) i.e. whether a petition under Article 227 of the Constitution of India with respect to a proceeding / order in a commercial suit at the level of the District Judge is to be heard by the Commercial Appellate Division or by the bench allocated in the roster to hear petitions under Article 227 of the Constitution of India.

13. The aforesaid question was framed because as per the prevalent roster allocation of this Court, petitions under Article 227 of the Constitution of India as well as revision applications under Section 115 of the CPC, are to be heard by a Single Judge Bench of this Court. Similarly, appeals against orders in a non-commercial suits at the level of District Judge / Additional District Judge, as per roster allocation, are heard by a Single Judge Bench of this Court. However since the Commercial Courts Act, vide Section 13(1A), requires appeals from commercial suits at the level of the District Judge to be heard by the Commercial Appellate Division, need was felt to hear the counsels, whether the petitions under Article 227 of the Constitution of India arising from such commercial suits should also be heard by a Division Bench or by the Commercial Appellate Division, as held by the Single Judge of this Court before which these

petitions were listed.

14. The senior counsel for the respondent in CM (M) No.132/2021 has again rightly contended that the remedy under Article 227 of the Constitution of India being *de hors* the Commercial Courts Act, would not be governed and guided by the Commercial Courts Act and would be governed by the roster allocation of this Court. It thus follows, that petitions under Article 227 of the Constitution of India arising from proceedings in commercial suits at the level of the District Judge also would be heard by the bench empowered under the roster to hear such petitions and which bench as per the present roster is of a Single Judge of this Court. Of course, it is open to Hon'ble the Chief Justice to in his discretion allocate hearing of petitions under Article 227 emanating from commercial suits at the level of the District Judge, to any other bench including to a division bench. The question no.(ii) aforesaid also stands answered accordingly.

15. During the hearing on 27th July, 2021 in CM (M) No.132/2021, it was felt that though the petitioners / defendants in CM(M) No.132/2021 had applied for rejection of the plaint on the ground of the Courts at Delhi lacking territorial jurisdiction, invoking Order VII Rule 11 of the CPC, the application, notwithstanding the nomenclature given thereto of Order VII Rule 11 of the CPC, was in fact under Order VII Rule 10 of the CPC. It was felt that once the CPC expressly provides the remedy to a defendant, if of the view that the Court in which the suit had been filed lacks territorial jurisdiction to entertain the same, to apply therefor under Order VII Rule 10 of the CPC, the law with respect to order VII Rule 10 of the CPC should

apply to consideration of such application and not the law under Order VII Rule 11 of the CPC. The counsels, vide order dated 27th July, 2021 were thus requested to address on the said aspect, as well as on, whether dismissal of an application under Order VII Rule 10 of the CPC and / or an application under Order VII Rule 11 of the CPC was revisable under Section 115 of the CPC. The latter question was put, because again it was felt that if the order of the District Judge (Commercial) impugning which CM(M) No.132/2021 under Article 227 of the Constitution of India was filed was revisable under Section 115 of the CPC and which remedy is expressly taken away under the Commercial Courts Act, a remedy under Article 227 of the Constitution of India would not be available.

16. The senior counsel for the respondent in CM(M) No.132/2021, on 3rd August, 2021 argued, that (i) the remedy for a defence that the Court in which the suit had been instituted does not have territorial jurisdiction to entertain the same having been provided in Order VII Rule 10 of the CPC, the said plea, even if given the nomenclature of Order VII Rule 11 of the CPC, ought to be treated as one under Order VII Rule 10 of the CPC; reliance in this regard was placed on *Vineet Handa Vs. Ozo Media Estate Ltd.* MANU/PH/3476/2020; (ii) orders of dismissal of applications under Order VII Rule 10 of the CPC as well as applications under Order VII Rule 11 of the CPC are revisable under Section 115 of the CPC, if otherwise satisfy the requirements thereof of failure to exercise jurisdiction or of having been made in the exercise of jurisdiction illegally or with material irregularity; (iii) if an application under Order VII Rule 11 of the CPC is allowed and the plaint rejected, the resultant order is a decree under Section 2(2) of the CPC and appealable under Section 96 of the CPC; (iv) similarly,

if an application under Order VII Rule 10 of the CPC is allowed, the same is appealable under Order XLIII Rule 1(a) of the CPC; (v) on the contrary, if an application under Order VII Rule 11 is dismissed and the order is made in failure of exercise of jurisdiction and / or acting in exercise of jurisdiction illegally or with material irregularity, the proviso to Section 115 is satisfied because, had the application been allowed, the said order would have finally disposed of the suit; and, (vi) similarly, the order of dismissal of an application under Order VII Rule 10 CPC is also revisable if an outcome of failure to exercise jurisdiction and / or made in exercise of jurisdiction illegally or with material irregularity, because if the application had been allowed, the suit would have been disposed of by return of the plaint.

17. We drew the attention of the senior counsel for the respondent in CM (M) No.132/2021 to the proviso to Section 115(1) and enquired, whether the words “.....would have finally disposed of the suit or other proceedings”, mean disposal of the suit by the Court in which it was filed, even if by return of the plaint, or require disposal of the suit on merits. An order disposing the suit by return of plaint, under Order VII Rule 10 of the CPC, though disposes of the suit as far the Court which is found to have no territorial jurisdiction to entertain the suit, but leaves the plaintiff entitled to sue for the same relief in the Court of appropriate territorial jurisdiction. It was thus enquired, whether from use of the word “finally” in the proviso to Section 115(1), it follows that where the suit can be instituted in the Court of appropriate territorial jurisdiction, it cannot be said to have been finally disposed of.

18. The senior counsel for the respondent in CM(M) No.132/2021 contended that though he has not found any precedent on the aforesaid proposition but in his view the final disposal would include disposal by return of plaint by the Court in which the suit was instituted and thus a dismissal of an application under Order VII Rule 10 of the CPC would also be revisable under Section 115 of the CPC.

19. The other counsels have not offered any arguments on the aforesaid aspects.

20. We have considered the contentions of the senior counsel for the respondent in CM(M) No.132/2021. Supreme Court, in ***Raizada Topandas Vs. Gorakhram Gokalchand*** AIR 1964 SC 1348 held that even when on trial on merits, it is found that the Court has no territorial jurisdiction, the plaint has to be ordered to be returned for presentation to the proper court and the suit not to be dismissed. To the same effect is an earlier Full Bench of the Allahabad High Court in ***Ananti Vs. Chhannu*** AIR 1930 Allahabad 193. A later Division Bench of the High Court of Allahabad, in ***Governing Council of Kayastha Pathshala, Prayag Vs. Ram Chandra Srivastava*** AIR 1992 Allahabad 158 also held that for lack of territorial jurisdiction, the plaint has to be returned under Order VII Rule 10 of the CPC and not rejected under Order VII Rule 11 of the CPC. The view in ***Allahabad Bank Vs. Shank's Steel Feb Pvt. Ltd.*** AIR 2008 Cal 96 (DB) is also the same. It thus follows that the order impugned in CM(M) No.132/2021 is of dismissal of an application under Order VII Rule 10 of the CPC and not of an application under Order VII Rule 11 of the CPC.

21. As far as our query with respect to the use of the word “finally” in

proviso to Section 115 of the CPC is concerned, we find the Supreme Court in *Sri Amar Chand Inani Vs. Union of India* (1973) 1 SCC 115, *Oil & Natural Gas Corporation Ltd. Vs. Modern Construction & Company* (2014) 1 SCC 648 and recently in *Exl Careers Vs. Frankfinn Aviation Services Pvt. Ltd.* (2020) 12 SCC 667 to have held that when a plaint is returned for presentation in the proper court and was presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint was presented in that court and that the suit instituted in the proper court is not in continuation of the suit filed in the court which returned the plaint. It was further held that “the order passed by the Panipat Court returning the plaint for presentation to the proper court was a final order and operated as *res judicata*, precluding the appellant from challenging its correctness” in the appeal against the order of the court in which the plaint was subsequently presented. Therefrom we deduce that even an order returning the plaint for lack of territorial jurisdiction is a order finally disposing of the suit as far as that court is concerned.

22. Once it is so, the order dismissing an application under Order VII Rule 10 of the CPC would satisfy the requirements of proviso to Section 115 of the CPC inasmuch as if the application had been allowed, the suit would have been finally disposed of and such an order, if made in failure to exercise jurisdiction or in exercise of jurisdiction illegally or with material irregularity, would be revisable under Section 115 of the CPC.

23. It thus follows, that the order impugned in CM(M) No.132/2021 is revisable under Section 115 of the CPC.

24. We may at this stage clarify that though the application under Order

VII Rule 11 of the CPC, in the commercial suit from which CM(M) No.132/2021 arises, was also filed on the ground of the suit being barred by res judicata but we have in our discussion hereinabove not considered the said aspect / ground, because we had occasion to deal with an appeal against an interim order in the same suit and vide judgement reported as ***Black Diamond Track Parts Private Limited Vs. Black Diamond Motors Private Limited*** 2021 SCC OnLine Del 2630 (DB), negated the plea of res judicata. The counsel for the petitioners / defendants in CM(M) No.132/2021 also has not made any arguments in that respect.

25. Having held that the order impugned in CM(M) No.132/2021 is revisable under Section 115 of the CPC, we enquired from the counsel for the petitioners therein, how a petition under Article 227 of the Constitution of India is maintainable.

26. The counsel for the petitioners in CM(M) No.132/2021 contended, that the petition under Article 227 of the Constitution of India has been filed, because revision under Section 115 of the CPC is barred under the Commercial Courts Act.

27. We have considered the aforesaid aspect.

28. A petition under Article 227 of the Constitution of India is a discretionary remedy and which discretion is ordinarily not exercised when an alternative remedy is available under the CPC. In, ***Surya Dev Rai*** supra as well as in ***Punjab National Bank Vs. O.C. Krishnan*** (2001) 6 SCC 569, ***Om Prakash Saini Vs. DCM Limited*** (2010) 11 SCC 622, ***Major General Shri Kant Sharma*** supra, ***Hameed Kunju Vs. Nazim*** (2017) 8 SCC 611 and ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs.***

Tuticorin Educational Society (2019) 9 SCC 538, it has been held that Article 227 cannot be invoked where the remedy of appeal or revision are available. Thus, *de hors* Section 8 of the Commercial Courts Act, a petition under Article 227 would not have been entertained against an order of dismissal of an application under Order VII Rule 10 of the CPC, for the reason of the statutory remedy of revision petition being available to the petitioners / defendants. The exercise by the High Court of power / jurisdiction under Article 227 is subject to well known / well settled rules of self-discipline and practice. Such jurisdiction / power is not to be exercised in derogation of statutory provisions. In *Koyilerian Janaki Vs. Rent Controller (Munsif), Cannanore* (2000) 9 SCC 406, it was held that it was not appropriate for the High Court to have interfered with the order in exercise of powers under Article 227 when the proceedings arose under a special Act which did not provide for second appeal or revision to the High Court; that the purpose behind not providing such remedy was to give finality to the order passed under the Act. Similarly, in *Niyas Ahmed Khan Vs. Mahmood Rahmat Ullah Khan* (2008) 7 SCC 539, it was held that the power of superintendence under Article 227 cannot be exercised in a manner ignoring or violating the specific provisions of the statute and that the High Court, while purporting to exercise powers under Article 227 to keep inferior Courts and Tribunals within the limits of their authority, should not itself cross the limits of its authority. To the same effect is *Sunita Rani Vs. Shri Chand* (2009) 10 SCC 628. In *A. Venkatasubbiah Naidu Vs. S. Challappan* (2000) 7 SCC 695 it was held that though no hurdle could be put against the exercise of the constitutional powers of the High Court, it was a well recognized principle which gained judicial

recognition, that the High Court should direct the party to avail himself of statutory remedies, before resorts to a constitutional remedy. The petition under Article 227 was held to be not maintainable owing to the availability of the remedy of appeal under the CPC. In *Surya Dev Rai* supra also it was held that to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227, the Courts have devised self imposed rules of discipline on their power; supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. It was held that the High Court should have regard to legislative policy formulated on experience and expressed by enactments where legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceeding to judicial review by way of appeal or revision. To the same effect is *Ajay Bansal Vs. Anup Mehta* (2007) 2 SCC 275.

29. The reasoning in the aforesaid judgments gave rise to the question, that since the remedy of revision under Section 115 of the CPC though available under the CPC against the order of dismissal of application under Order VII Rule 10 of the CPC, has been taken away under the Commercial Courts Act, whether a petition under Article 227 would lie.

30. We are of the view that once the Commercial Courts Act has expressly barred the remedy of a revision application under Section 115 of

the CPC, with respect to the suits within its ambit, the purpose thereof cannot be permitted to be defeated by opening up the gates of Article 227 of the Constitution of India. The scope and ambit of a petition under Article 227 is much wider than the scope and ambit of a revision application under Section 115 of the CPC; whatever can be done in exercise of powers under Section 115 of the CPC, can also be done in exercise of powers under Article 227 of the Constitution. Allowing petitions under Article 227 to be preferred even against orders against which a revision application under Section 115 CPC would have been maintainable but for the bar of Section 8 of the Commercial Courts Act, would nullify the legislative mandate of the Commercial Courts Act. Recently, in *Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited* (2020) 15 SCC 706, in the context of petitions under Article 227 of the Constitution of India with respect to orders in an appeal against an order of the Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act, 1996, it was held that if petitions under Article 226 / 227 of the Constitution against orders passed in appeals under the Arbitration Act were entertained, the entire arbitral process would be derailed and would not come to fruition for many years. It was observed that though Article 227 is a constitutional provision which remains untouched by an non-obstante Clause 5 of the Arbitration Act but what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing First Appeals under the Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same taking into account the statutory policy, so that interference is restricted to orders which are patently lacking in inherent jurisdiction. Thus, though we are of the view that gates of Article 227

ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits.

31. We thus hold the petition under Article 227 of the Constitution of India to be maintainable with respect to the order impugned in CM(M) No.132/2021. However the discretion, whether in the facts and circumstances such petition is to be entertained or not, having under the roster been vested in the Single Judge, we leave it to the Single Judge to exercise such discretion.

32. Resultantly, CM(M) No.132/2021 is to be put up before the Single Judge.

33. That brings us to CM(M) No.225/2021 and in which additional questions no.(iii) and (iv) aforesaid were framed.

34. The counsel for the respondent in CM(M) No.225/2021 has answered the said questions by stating, that (i) the Commercial Courts at the level of the District Judge were constituted on 7th July, 2018 i.e. prior to the institution of the suit from which CM(M) No.225/2021 arises; and, (iii) he

has not been able to find a precedent on, whether the time to file the written statement in a commercial suit begins to run from the date when the summons of the suit are served or from the date when the complete copy of plaint and documents is furnished to the defendant in compliance of the order of the Court.

35. Though we had framed the aforesaid questions, but in accordance with what we have held hereinabove, strictly speaking the decision thereon falls in the domain of the bench competent to hear the petition under Article 227 of the Constitution of India and to in its discretion adjudicate whether to entertain the petition or not.

36. There is however no ambiguity or counter argument, that against an order dismissing an application for condonation of delay in filing the written statement, neither an appeal nor revision petition under Section 115 of the CPC lies. Thus a petition under Article 227 would indeed lie against such an order and the said petition as aforesaid held, is required to be heard by the bench allocated in the roster to hear petitions under Article 227 of the Constitution of India.

37. Accordingly, list CM (M) No.132/2021 as well as CM(M) No.225/2021 before a bench allocated to hear petitions under Article 227 of the Constitution of India as per roster, on 27th August, 2021.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

AUGUST 10, 2021/‘gsr’..