

Sukh Dev Vs. Prakash Chandra

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Court : Rajasthan

Decided On : Apr-16-2010

Judge : Prakash Tatia and; Dinesh Maheshwari, JJ.

Appellant : Sukh Dev;l.Rs. of Late Sh. Jetha Ram;basant Lal Mehta and anr.;ramesh Kumar

Respondent : Prakash Chandra;naln Singh and anr.;chandra Lal and ors.;smt. Magi Bai

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. The issue involved in these appeals is whether intracourt appeal lies against the order passed of the nature in writ jurisdiction by the learned Single Judge of this Court ?

2. In D.B. Civil Special Appeal No. 32/2010, the writ petition was labelled under Articles 226 and 227 of the Constitution of India. This appeal is against the order of the learned Single Judge dated 17.12.2009 passed in S.B. Civil Writ Petition No. 11796/2009. The learned Single Judge dismissed the writ petition after taking note of the fact that by impugned order of the trial court dated 12.10.2009, the trial court directed defendant-petitioner for discovery of documents under Order 11

Rule 14, CPC as according to the plaintiff, those documents were in possession of the defendant. This rejection of the writ petition of the writ petitioner is under challenge in D.B. Civil Special Appeal No. 32/2010. In the writ petition, the writ petitioner prayed that the impugned order of the trial court 12.10.2009 may be set aside and the application of the plaintiff-respondent under Order 11 Rule 14 read with Section 151 CPC may be rejected.

3. D.B. Civil Special Appeal No. 10/2010 is against the order of the learned Single Judge dated 29.10.2009 in S.B. Civil Writ Petition No. 1034/2009. In this case, the petitioner challenged the order of the trial court dated 19.1.2009 whereby the trial court rejected the defendant-petitioner's application filed under Order 16 Rule 1(3), CPC for summoning two witnesses during the course of defendant's evidence. In the writ petition, the petitioner not only prayed for quashing the order of the trial court dated 19.1.2009 but also prayed that the writ petitioner's application filed under Order 16 Rule 1(3) CPC may be allowed and the witnesses referred in the application may be summoned. The writ petition was labelled as under Articles 226 and 227 of the Constitution of India.

4. D.B. Civil Special Appeal No. 12/2010 has been preferred to challenge the order of the learned Single Judge dated 27.11.2009 passed in S.B. Civil Writ Petition No. 714/09. The writ petition was filed by the writ petitioners challenging the order of the trial court dated 13.1.2009 whereby the trial court rejected the petitioner's application under Order 8 Rule 9, CPC and refused to take on record the rejoinder filed by the petitioner-plaintiff to the written statement. In the writ petition, the petitioner sought relief of setting aside the order dated 13.1.2009 as well as for allowing the application of the writ petition filed under Order 8 Rule 9, CPC in the trial court so as to get the rejoinder filed by the plaintiff on record. The writ petition was labelled under Articles 226 and 227 of the Constitution of India.

5. D.B. Civil Special Appeal No. 844/2009 has been preferred against the order of the learned Single Judge in S.B. Civil Writ Petition No. 9232/09 wherein the appellant-petitioner challenged the order of the trial court dated 7.8.2009 whereby the trial court rejected the writ petitioner's application filed under Order 8 Rule 1, CPC, which was filed for production of some documents by the defendant. The

writ petitioner, in the writ petition, prayed for quashing the order dated 7.8.2009 by specifically mentioning that the writ, order or direction in the nature of mandamus or certiorari, be issued and the order dated 7.8.2009 passed by the trial court may be set aside and further the documents may be taken on record. The writ petition has been labelled under Articles 226 and 227 of the Constitution of India.

6. From the above facts, it is clear that all the writ petitioners labelled their writ petitions not only under Article 226 of the Constitution of India but also under Article 227 of the Constitution of India. The writ petitioners in their Writ Petition, S.B. Civil Writ Petition No. 1034/2009, 714/2009, 9232/2009, prayed for not only quashing of the orders of the trial courts but prayed further for allowing the applications which could have been done only by substitution of the order of the trial court by the order of the High Court. The above facts are relevant because of the reason that Hon'ble the Supreme Court has already taken note of the fact that labelling of the writ petition both under Articles 226 and 227 of the Constitution of India has become customary, though said practice has been deprecated and Hon'ble the Supreme Court held that mere label of the writ petition is not relevant for the purpose of finding out the nature of the order passed in the writ jurisdiction. Further, Hon'ble the Supreme Court held that what is the nature of the order is required to be gathered from the order itself. Any ancillary relief or direction given in the order may not change the substance of the order and substance in fact in the order alone can determine, whether it is under Article 226 of the Constitution of India or under Article 227 of the Constitution of India.

7. Learned Counsel for the appellants S/Sh. Manoj Bohra, Mahesh Joshi, C.S Kotwani, Dinesh Mehta, Rajesh Shah and learned Counsels S/Sh. M.R. Singhvi, Sunil Bhandari, Vikas Balia, Manish Shishodia and Sachin Acharya who appeared as intervenors have argued that in view of Rule 134 (1) as amended by notification dated 28th June, 2005, the present intra-court appeal is maintainable and it has also been argued by learned Counsel Sh. M.R. Singhvi that in view of Rule 8B of the High Court of Judicature for Rajasthan Case Flow Rules, 2006 also the intra-court appeal is maintainable. Learned Counsel for the appellants as well as counsels who appeared as intervenors who argued for maintainability of the intra-court appeal, relied upon various judgments delivered by Hon'ble Supreme Court

and judgments of this Court wherein the issue of intra-court appeal with reference to letters patent law or the Rule 18 of the Rajasthan High Court Ordinance, 1949 and the Rule 134 of the Rules of 1952 'unamended and amended were considered.

8. Learned Counsel for the appellants submitted that writs are issued under Article 226 of the Constitution of India of the nature specified under Article 226 of the Constitution of India itself and the High Court has jurisdiction to issue writ of certiorari in matters arising out of the orders passed by civil courts and that jurisdiction of the High Court is in addition to the High Court's jurisdiction under Article 227 of the Constitution of India. It is also vehemently submitted that even if a petition is filed under Article 227 of the Constitution of India then also, the writ, order or direction can be issued only by exercising the jurisdiction under Article 226 of the Constitution of India, which is only Article wherein the High Court has been given power to issue writ, order or direction. Therefore, the Article 226 of the Constitution of India is the source of power to exercise jurisdiction under Article 227 of the Constitution of India under which only writ, order or direction can be issued including any order even of supervisory nature. In sum and substance, according to learned Counsel for the appellants every order passed by the Single Judge of the High Court in writ jurisdiction, either under Article 226 or Article 227 of the Constitution of India is appealable order as it is passed in High Court's original jurisdiction. In support of their arguments, learned Counsels relied upon the judgment of this Court delivered in the case of Ramesh Chand Tiwari and ors. v. Board of Revenue and Ors. 2005 (2) WLC (Raj.) 305 and the judgment of the Hon'ble Supreme Court delivered in the case of Sushilabai Laxminarayan Mudliyar and Ors. v. Nihalchand Waghajibai Saha and Ors. : 1993 Supp. (1) SCC 11 and it has been argued that where facts justify a party in filing a petition either under Article 226 or 227 of the Constitution of India and party chooses to file his petition under both the Articles or files a petition under Article 227 of the Constitution of India or in a petition under Article 226 of the Constitution of India and the court gives some direction which may pertain to Article 227 of the Constitution of India then also, the aggrieved party may not be deprived from right of appeal. In addition to above, learned Counsels also relied upon the judgment of the Hon'ble Supreme Court and this Hon'ble Court delivered in Kishorilal v. Sales Officer, District Land

Development Bank and Ors. reported in (2006) 7 SCC 496 wherein the Hon'ble Supreme Court held that Division Bench of the High Court wrongly dismissed Letters Patent appeal without noticing that the appeal would be maintainable if the writ petition was filed under Article 226 and 227 of the Constitution of India in view of the judgment delivered in Sushilabai Laxminarayan Mudliyar's case. Division Bench of this Court in Anandilal v. State of Rajasthan and Ors. reported in : 1996 (2) WLC (Raj.) 36 after considering the various judgments of the Hon'ble Supreme Court held that question as to whether the intra-court appeal or special appeal in the same High Court would be maintainable, would depend upon the facts of the case. P.S. Sathappan (Dead) by LRs. v. Andhra Bank Ltd and Ors. : AIR 2004 SC 5152 has also been cited to argue that Hon'ble Supreme Court after considering the amendments made in the Civil Procedure Code held that Letters Patent appeal against the order passed by the Single Judge of the High Court is maintainable under Clause 15 of the Letters Patent of the High Court. Then it has been argued that in the case delivered in Central Mine Planning & Design Institute Ltd v. Union of India and Anr. : (2001) 2 SCC 588 the Hon'ble Supreme Court held that the judgment includes intermediary and interlocutory judgments also and interlocutory order, which is a final determination affecting valuable rights and obligations of the parties is a judgment within the meaning of Clause 10 of Letters Patent of Patna and so has been held, after considering the law of Letters Patent of Calcutta, Bombay and Madras High Court also.

9. We considered the submissions advanced by learned Counsels and the judgments relied upon.

10. The same issue which is under consideration before us, has been considered in several judgments of this Court in the light of the prevailing provisions of intra-court appeal like Section 18 of the Rajasthan High Court Ordinance, 1949 and after its repeal, under Rule 134 of the Rules of High Court of Judicature for Rajasthan, 1952 as well as in the light of the various judgments of the Hon'ble Supreme Court rendered after considering the Letters Patent Rules of different High Courts. Different views were taken while interpreting the nature of order which can be passed under Articles 226 and 227 of the Constitution of India as well as on the issue whether appeal lies against the orders passed under Article

226 and orders passed under Article 227 of the Constitution of India and further whether intra-court appeal lies even if there is no specific rule providing for intra-court appeal and if rule provides intra-court appeal then whether the order passed under Article 226 and also under Article 227 of the Constitution of India both can be challenged in intra-court appeal. Before proceeding to consider other judgments, we would like to refer a few earlier judgments of this Court which are Anandi Lal v. State of Rajasthan and Ors. : 1996 (2) WLC (Raj.) 36; Mohan Lal v. Lal Chand 2001 (1) WLC 129; Punjab National Bank v. Purewell : 2002 (1) WLC (Raj.) 67; Sher Singh Meena v. Chief Engineer 2004 (4) WLC 288 and the Full Bench decision in the State of Rajasthan v. V.R.C. Mishra 2003 (2) WLC 235 and lastly, the Full Bench decision of this Court delivered in the case of Ramesh Chand Tiwari and Ors. v. Board of Revenue and Ors. : 2005 (2) WLC 305.

11. The Division Bench of this Court in Anandi Lal's case (supra) held that proceedings under Article 227 of the Constitution of India is not an original proceeding and intracourt appeal does not lie against the judgment of the Single Judge given in the petition under Article 227. The Division Bench also considered the Section 18 of the Rajasthan High Court Ordinance, 1949 and thereafter held that whether intra-court appeal or special appeal in the same High Court can be maintainable or not, would depend upon the facts of the case. The ratio is that if order is under Article 226 and the rule provides for intra-court appeal, then intra-court appeal lies and the order under Article 227 of the Constitution of India is in supervisory jurisdiction, therefore, against the order passed in supervisory jurisdiction, no intra-court appeal lies.

12. Before repeal of Section 18 of the Rajasthan High Court Ordinance, 1949, intra-court appeals were maintainable under Section 18 of the Rajasthan High Court Ordinance, 1949. Said Ordinance was repealed w.e.f. 29.8.2001. Because of that repeal of Ordinance of 1949, the question arose that in absence of Section 18 of the Rajasthan High Court Ordinance, 1949 whether any intracourt appeal is maintainable This issue came up for consideration before the Division Bench of this Court in the case of State of Rajasthan and Anr. v. Vasna Ram and Anr. D.B. Special Appeal No. 846/2001 decided on 13.1.2001. In Vasna Ram's case, it has been held that there is no other provision existing in any Statute, Ordinance or

Rules providing for an appeal against the judgment and order of the Single Judge and as the Ordinance of 1949 stood repealed, therefore, the intra-court appeal is not maintainable.

13. Another Division Bench, after recording detail reasons and after considering the provisions of Article 225 and Section 52, 54, 57 of the State Reorganisation Act, 1956, took a different view than the view taken in Vasna Ram's case and referred the matter to the Larger Bench to decide two questions. But for our purpose, only question No. 2 is relevant which is as under:

2. Whether right to file intra-court appeals stands abrogated with the Repealing Act coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed notwithstanding the several other existing provisions preserving the powers of the High Court in the matter of administration of justice as contained in Article 225 of the Constitution read with Sections 52, 54 and 57 of the State Reorganisation Act, 1956?

14. In detail judgment, the Full Bench of this Court in the State of Rajasthan and Anr. v. V.R.C. Mishra and Ors. 2003 (2) WLC 235 answered the above question and held that decision given in Vasna Ram's case, as well as the judgment taking similar view in the case of New India Assurance Company Ltd. v. Smt. Pushpa Devi and Anr. DBCSA No. 53/2002 and Chhotu Lal v. Rajasthan Spinning Weaving Mills Ltd. and Anr. DBCSA No. 485/2002 decided on 3.10.2002, do not lay down the law correctly. The Full Bench held that intra-court appeal is maintainable, even after repeal of the Rajasthan High Court Ordinance, 1949. The Full Bench also held that Rule 134 of the Rules of 1952 would still survive to the repeal of the Rajasthan High Court Ordinance, 1949. However, what is the difference in the nature of order passed one under Article 226 and another under Article 227 of the Constitution, was not under consideration of the Full Bench in the case of V.R.C. Mishra's case (supra). This proposition is not in dispute that intracourt appeal in the Rajasthan High Court is permissible by Rule 134 and only question involved is about the scope of Rule 134 as amended by Notification dated 28.6.2005 and under Rule 8B of the High Court of Judicature for Rajasthan Case Flow Management Rules, 2006, as the contention of the learned Counsels is that all

orders passed by learned Single Judge in writ jurisdiction, whether under Articles 226 or 227 of the Constitution of India and of the nature which have been challenged are also appealable.

15. After above full Bench decision of this Court(V.R.C. Mishra's case) ,again a specific question was referred to the Full Bench in the case of Ramesh Chand Tiwari and Ors. v. Board of Revenue and Ors. : 2005 (2) WLC (Raj.) 305. The question referred was that:

Whether intra-court appeal to the Division Bench is maintainable against the order/judgment rendered by the learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India

16. The Full Bench after considering various earlier judgments of this Court including the Full Bench judgment of this Court delivered in V.R.C. Mishra's case and several Supreme Court judgements and after considering unamended Rule 134 of the Rules of 1952, answered the question in para 29 of the judgment. Para Nos. 28 and 29 both are relevant which are as under:

28. As we have earlier noticed that the Apex Court in Baby v. Travancore Devasram Board (supra) enlarged and magnified the scope of supervisory jurisdiction under Article 227 of the Constitution. This myth has been smashed that under the power of superintendence the High Court exercises only the revisional jurisdiction. The Apex Court propounded that the powers of revision conferred on it by other Legislation. Ratio indicated in Baby v. T.D. Board and mandate of Rule 134 of Rules of 1952 escaped notice in Sher Singh Meena v. Chief Engineer. We support, to the limited extent the view expressed by the Division Bench in Sher Singh Meena's case i.e. Where the Single Judge exercise only revisional powers under Article 227, the intra-court appeal shall be dismissed as not maintainable. But we disagree with this opinion of the Division Bench that all judgments/orders passed by the Single Judge in exercise of supervisory jurisdiction under Article 227 are not amenable to intra-court appeals, since the supervisory jurisdiction under Article 227 is much wider and akin to appellate, revisional or corrective jurisdiction.

29. We sum up our conclusion, thus:

(i) The power of superintendence conferred on the High Court under Article 227 of the Constitution is always in addition to the revisional jurisdiction. It is wider than one conferred by Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Jurisdiction under Article 227 is not an original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction.

(ii) Any person desiring to prefer intra-court appeal from the

JUDGMENT / ORDER

of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the

of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the

JUDGMENT / ORDER

of the Single Judge was rendered purely in exercise of revisional jurisdiction, the intra-court appeal shall stand dismissed as not maintainable. Judgements/orders passed by the Single Judge in exercise of wider supervisory jurisdiction under Article 227 are amenable to intra-court appeals.

17. In this Full Bench judgment delivered in Ramesh Chand Tiwari's case, as mentioned above, even after holding that 'jurisdiction under Article 227 of the Constitution of India is not original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction', in first part of para 29 itself, in second part of para 29, specifically held that 'judgments/orders passed by the Single Judge in exercise of supervisory jurisdiction under Article 227 are amenable to intra-court appeal'. This proposition we have to examine in the light of earlier as well as subsequent judgments of the Supreme Court.

18. In above Ramesh Chand Tiwari's case, the Full Bench noticed that Hon'ble Apex Court in the cases of Umaji Keshao Meshram v. Radhikabai 1986 (Supp.) SCC 40; Sushila Bai Laxminarayan Mudliyar v. Nihal Chand : AIR 1992 SC 185; Ratnagir D.C. Cooperative Bank v. Dinkar Kashinath Watve : 1993 Supp. (1) SCC 9; Likmat News Papers v. Shanker Prasad : (1999) 6 SCC 275 held that the order passed in Article 227 of the Constitution is not in original jurisdiction of the High Court but is under supervisory jurisdiction and the Supreme Court held that intra-court appeal is not maintainable. However, in para 28, by relying upon the judgment of the Baby v. Travancore Devashram Board (1998) 8 SCC 310 disagreed with the opinion of the Division Bench of this Court that all the judgments/orders passed by the Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India are not amenable to intra-court appeals. Therefore, there are number of judgments referred in the Full Bench judgment of Ramesh Chand Tiwari's case(supra) rendered by the Hon'ble Supreme Court, holding that intra-court appeal is not maintainable against the order/judgment rendered under Article 227 of the Constitution of India. Subsequent to Full Bench decision, Hon'ble Supreme Court after considering the all judgments which were considered by the Full Bench, in the case of Ashok K. Jha and Ors. v. Garden Silk Mills Limited and Anr. : (2009) 10 SCC 584 held that no intra-court appeal is maintainable against the judgment under Article 227 of the Constitution rendered by the Single Judge of High Court. Therefore, the Full Bench decision of this Court rendered in Ramesh Chand Tiwari's case (supra) do not lay down the law correctly.

19. This judgment by Full Bench in Ramesh Chandra Tiwari's case was delivered on 24.3.2005. Thereafter Rule 134(1) in the Rules of 1952 was amended by Notification dated 28.6.2005 and, therefore, it appears that the appellants again raised the same issue with additional support as the Rule 134(1) was amended subsequent to the Full Court decision of this Court and, therefore, we are proceeding to decide the effect of amendment in the Rule 134(1) of the Rules of 1952.

20. In the judgment of Umaji Keshao Meshram(supra), the same question was for consideration before the Hon'ble Supreme Court and that was whether intra-court

appeal before Division Bench against judgment of Single Judge is maintainable or not. Hon'ble the Apex Court considered Clause 15 of the Letters Patent of Bombay High Court as well as the law which was in force before the Clause 15 of the Letters Patent of Bombay High Court, like Section 107 of the Government of India Act, 1915, General Clauses Act, 1897 and several judgments on the point, and after detail discussion, held in para 102 of the judgment that if such right of appeal is provided under the Charter of the High Court then intra-court appeal will lie from the judgment passed by the Single Judge of the High Court. It can be provided in the Charter of the High Court or may be by Letters Patent or by a statute. In para 103 of the judgment of Umaji Keshao Meshram (supra), Hon'ble the Supreme Court held that it is equally well-settled in law that a proceeding under Article 227 is not an original proceeding. Then further it has been held that where the facts justify a party in filing an application either under Article 226 or Article 227 of the Constitution, and the party chooses to file his application under both the 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 order sought to be appealed against is under Article 226. In addition to above, in the above case, Hon'ble the Supreme Court held that the proceedings under Article 226 cannot be governed by the Rules made by the High Court under the Code of Civil Procedure. Under Sections 122 and 125 of the Code of Civil Procedure, the High Court are conferred the power to make rules regulating their own procedure and the procedure of the civil courts subject to their superintendence and they can by such rules annul, alter or add to all or any of the rules in the First Schedule to the Code. These rules are, therefore, intended to regulate the exercise of procedure in respect of matters to which the Code applies. The Code deals with suits and appeals, reference, review and revision arising out of orders and decrees passed in suits. Under Section 141, the procedure provided in the Code in regard to suits is to be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. The Explanation to that section inserted by the Code of Civil Procedure (Amendment) Act, 1976, provides as

follows:

Explanation.- In this section, the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.

Meaning thereby, the proceedings under Article 226 of the Constitution of India are not governed by the Code of Civil Procedure or the rules framed thereunder or even rules framed by the High Court for regulating the procedure of the civil courts and ultimately, it has been held that whether intra-court appeal lies or not, depends upon, whether by rules made by the High Court in exercise of rule making power so has been provided or not.

21. In Umaji Keshao Meshram's case (supra) came up for consideration again in the case of Sushilabai L. Murliyar v. Nihalchand W. Shaha : 1993 Supp (1) SCC 11 wherein earlier judgment of Full Bench of the Bombay High Court delivered in the same case of Sushilabai Laxminarayan Mudliyar v. Nihalchand Weaghajibhai Shaha 1989 Mh LJ 695 and various judgments of High Courts and Supreme Court have been considered, wherein interpreting Clause 15 of the Letters Patent of Bombay High Court, it has been held that whether appeal before the Division Bench lies against the order of Single Judge, depends upon in the truth and substance of the order passed by test under Articles 226 and 227 of the Constitution of India and it has been reiterated that where facts justify filing of petition either under Article 226 or Article 227, but it is filed under both the Articles, Court should treat the petition as being made under Article 226 so as not to deprive the party of the right of appeal to Division Bench when substantial part of the order sought to be appealed against is under Article 226. In the brief judgment delivered in the above case of Sushilabai L. Mudliyar, Hon'ble Supreme Court on facts of the case held that the grounds taken in the writ petition unmistakably go to show that it was a petition under Article 226 and the order passed by the learned Single Judge was also under Article 226. Therefore, Hon'ble Supreme Court held that the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. The ratio of the above judgment also leads to the conclusion that had it been order under Article 227 of

the Constitution of India, then it would not have been appealable order.

22. In another case delivered in the case of *Kishorilal v. Sales Officer, District Land Development Bank and Ors.* (2006) 7 SCC 496 observations made by the Hon'ble Supreme Court have been relied upon which are in para 13, which reads as under:

13. 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 Court in *Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha* : 1993 Supp (1) SCC 11

23. In the above judgment of *Kishorilal*, it appears that the issue as such about the nature of the order as well as High Court's jurisdiction under Articles 226 and 227 of the Constitution was not involved and only observation with respect to the maintainability of intra-court appeal is as quoted above which may lead to inference that intra-court appeal is maintainable against any order, may it has been passed under Article 226 or Article 227 of the Constitution of India but in view of the distinction drawn by the Hon'ble Supreme Court in the earlier and subsequent judgments between the orders which are passed under Articles 226 and 227 of the Constitution of India, it will be safe to take help of earlier and subsequent judgments wherein questions about the jurisdiction of High Court under Articles 226 and 227 and the nature of orders which can be passed under above two Articles were directly involved and answered.

24. After considering the various judgments of the Hon'ble Supreme Court, including the judgment of the *Umaji Keshao Meshram* (supra), Hon'ble the Supreme Court in the case of *Surya Dev Rai v. Ram Chander Rai and Ors.* : (2003) 6 SCC 675 held that the nature and ambit of power under Article 227 is wider than one conferred on the High Court by Article 226 in the sense that power of superintendence is not subject to technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. It has been held that it is well settled that the power of superintendence conferred on the High Court under Article 227 is

administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paying the path of justice and removing any obstacles therein. Hon'ble the Supreme Court in the case of Surya Dev Rai's made clear the distinction between the jurisdiction under writ of certiorari and supervisory jurisdiction of High Court and did not appreciate obliteration of distinction between Articles 226 and 227 of the Constitution of India and the Hon'ble Supreme Court observed 'Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements.' The detail discussion on the above subject and the decision given by the Hon'ble Supreme Court in above case gives sufficient guide-lines for finding out the nature of the order sought to be challenged in intra-court appeal because in view of the various judgments, it is clear that intra-court appeal lies against the order passed by the Single Judge of the High Court in original jurisdiction and not against the order passed in supervisory jurisdiction including the jurisdiction of the High Court under Article 227 which is not original jurisdiction but is supervisory jurisdiction. Further, intra-court appeal lies only if intra-court appeal is provided by the statutory provision. From Surya Dev Rai's case(supra), it is very clear that mere labelling the petition under Article 226 of the Constitution of India or because in the order passed by Single Judge words Article 226 have been mentioned, will not be decisive for drawing inference that the petition or even order passed by the Single Judge is passed under Article 226. In the Constitution of India, in spite of having Article 226, Article 227 has been provided purposely and particularly to meet with situation like challenge to orders passed by the subordinate courts and to empower the High Court to do more than what High Court could have done under Article 226 of the Constitution. Hon'ble the Supreme Court specifically held that while exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the

High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

25. Though it may not be necessary to quote Article 226 and 227 of the Constitution of India but to make clear the difference in the language used in two Articles, their relevant parts are quoted below:

226. Power of High Court to issue certain writs.- (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person, or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

227. Power of superintendence over all courts by the High Court.- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generally of the foregoing provision, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts;

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time

being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

26. We quoted Sub-clause (1) of Article 226 and Article 227 completely, which clearly shows that in Article 226 words 'courts' and 'tribunals' as such have not been used and these two words have been used in Article 227 of the Constitution of India. The limitation under Article 226 as prescribed by use of language 'for the enforcement of any of fundamental rights conferred by Part III and for any other purpose' are not in Article 227 of the Constitution of India.

27. It is settled law that if legislature uses different languages or words in two provisions of the same statute then that is done not inadvertently or without noticing the language used in earlier provisions of the statute. In spite of having Article 226 in the Constitution of India, special provision has been made just after Article 226 in the form of Article 227 in the Constitution. We have already noticed that difference between the two jurisdictions, one under Article 226 and another under Article 227 is wide and the scope under two provisions are different. We have already noticed from the judgments of the Supreme Court, particularly in *Surya Dev Rai's case*(supra), which clearly demonstrates that Article 227 has been enacted purposely so that technicalities of procedure or tradition fetters which are found in writ jurisdiction, may not be fetters for the High Court and the High Court may exercise jurisdiction under Article 227 independent to the power conferred by Article 226 for courts and tribunals. The language of Article 227, as held in *Surya Dev Rai's case*(supra), empowers the High Court to pass appropriate orders, administrative as well as judicial. This jurisdiction is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. In *Surya Dev Rai's case*(supra) it has been specifically held that 'the paramount consideration behind vesting such wide power of superintendence in the High Court is paying the path of justice and removing any obstacles therein.'

28. Therefore, we are of the view that superintendence jurisdiction under Article 227 of the High Court is not teeth less jurisdiction or a dormant jurisdiction which

requires injecting life with the help of any other provisions of law or even requires any help from Article 226 of the Constitution of India.

29. From the above Articles 226 and 227 of the Constitution of India, we can notice that Article 226 may be law of general nature and is extra and discretionary jurisdiction of the High Court and Article 227 is specific law made in the Constitution itself to give power to the High Court of superintendence over the courts and tribunals so that High Court may pass appropriate order and even those orders which cannot be passed under Article 226 and also may pass the orders which can otherwise be passed under Article 226, like quashing of the order of the subordinate court or tribunal. When a remedy is available to the party to the civil litigation under specific provision of law, that is, Article 227 of the Constitution of India then there may not arise any reason and occasion for invoking extra ordinary and discretionary jurisdiction of the High Court under Article 226 of the Constitution of India unless there is reason not to invoke jurisdiction under Article 227.

30. The same controversy about the maintainability of Letters Patent Appeal against the order of the Single Judge came up for consideration in the recent judgment of the Hon'ble Supreme Court in the case of Ashok K. Jha (supra). In Ashok K. Jha's case, all judgments referred above and several other judgments of the Supreme Court as well as of the High Courts were considered and it has been reiterated that the jurisdiction of the High Court under Article 226 of the Constitution of India is original jurisdiction, whereas that is under Article 227 of the Constitution of India is supervisory jurisdiction and in para 36 of the judgment it has been held that 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. Then it has held 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.

31. At this juncture it will be relevant to mention here that in Ashok K. Jha's case, intra-court appeal was held to be maintainable in the fact of that case which are that transfer order of the employee was under challenge before the Labour Court,

wherein only relief claimed by the petitioner was for quashing of the order of transfer. The Labour Court rejected the employee's plea against the transfer order, against which Employees' Union preferred appeal before the Industrial Court, Surat, who set aside the order of the Labour Court, wherein direction was issued to the employer to withdraw the order of transfer. Said order of the Industrial Court was challenged by filing petition under Articles 226 and 227 of the Constitution of India, which was dismissed by the Single Judge, against which Letters Patent Appeal under Clause 15 of the Letters Patent was preferred before the Division Bench. The Division Bench allowed the appeal and set aside order passed by the Industrial Court, Surat and restored the order passed by the Labour Court, Surat. The Hon'ble Supreme Court considered the question of maintainability of the intra-court appeal under Clause 15 of the Letters Patent of Bombay High Court, wherein Hon'ble the Supreme Court on facts, found that the order under challenge was under Article 226 of the Constitution of India and not under Article 227 of the Constitution of India. So far as ratio of the judgment in Ashok K. Jha's case is concerned, that again reiterated the view expressed by all earlier judgments of the Supreme Court, that if order is under Article 227 of the Constitution of India, no intra-court appeal is maintainable. We are of the opinion that there cannot be appellate, revisional or (super) supervisory jurisdiction over supervisory jurisdiction.

32. None of the judgment has been brought to our knowledge deciding the issue that when a writ petition is preferred to challenge the order of the subordinate court, then whether the High Court exercises its supervisory jurisdiction under Article 227 or under Article 226 of the Constitution of India It is settled law that jurisdiction under Article 227 is wide and is not subject to technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction as held in various judgments of the Supreme Court. Normally, mere quashing the order of the subordinate court passed during trial in suits or hearing of appeal, may not serve any purpose and may result into re-opening of the issue decided by trial court or appellate court which is required to be avoided and can be avoided by exercise of power under Article 227 of the Constitution of India by not only setting aside the order of the trial court or the appellate court subordinate to the High Court but that order, by exercising jurisdiction under Article 227, can be modified

and can be substituted by the order of the High Court resulting into final decision for the issue involved. Consequently, it will avoid the multiplicity of the proceedings. Not only this, if order of the subordinate court is merely set aside and said subordinate court again decides the matter afresh, then that order again may be challenged under Article 226 of the Constitution of India which again only can be quashed and set aside resulting into again same exercise by the subordinate court. This makes clear the reason for different languages in Articles 226 and 227 of the Constitution and for court's and tribunal's orders separate and independent Articles have been made in the Constitution of India purposefully otherwise there was no need to enact Article 227 of the Constitution of India. However, there is no need to supply more reasons than what have been already given in Surya Dev Rai's case (supra) by Hon'ble Supreme Court and we are of considered opinion that orders passed by the subordinate courts in civil proceedings, if are challenged, normally, leaving apart rare and exceptional cases, can be and are (required to be) challenged under Article 227 of the Constitution of India. The label and title given by the writ petitioner in the writ petition is not relevant. The order passed by the Single Judge in such matters, unless specifically ordered to be under Article 226 of the Constitution of India, it is required to be accepted as an order passed by the Single Judge in supervisory jurisdiction and under Article 227. This is because of the reason that labelling of petition as well as mentioning of petition has become customary, may be earlier inadvertently, but looking to the present trend, it may also be intentional (for which there is no bona fides). Hon'ble the Supreme Court in Surya Dev Rai's case(supra) also observed as under:

Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements .

33. We may make it clear that if any order of subordinate court is challenged by preferring writ petition before the High Court and party intends to challenge the order under Article 226 of the Constitution of India, then it is duty of that party to specifically state reasons for preferring the writ petition under Article 226 with specific averment that petition is not under Article 227 of the Constitution of India. This is necessary in view of the fact that the petitioner should show his bona fides for not seeking relief under wider power of the High Court under Article 227 of the Constitution of India, wherein complete relief can be granted to the petitioner and final order may be passed which will avoid multiplicity of proceeding in court/courts and yet the petitioners has chosen to prefer writ petition under Article 226 of the Constitution of India where the order of the subordinate court can only be set aside (and that also can be done under Article 227 of the Constitution of India). Not only this but the writ petitioner who chooses to challenge the order of the subordinate court under Article 226 of the Constitution of India, is required to press his plea that the petition is under Article 226 of the Constitution of India so that the Single Judge may pass appropriate order holding the petition to be under Article 226 or under Article 227 of the Constitution of India, by that he will be doing so by taking risk upon himself of dismissal of writ petition for not claiming any consequential relief. At this place it may be noticed that the proceeding in civil court are governed by the Code of Civil Procedure. The jurisdiction of High Court may be invoked under Articles 226 or 227 of the Constitution of India to challenge the order passed in civil suit or in civil Appeal. The procedure in High Court for writs may be different than as provided for cases in subordinate courts. But even in writ jurisdiction, facts warrant, relief can be granted only in consonance with the provisions of civil laws. There cannot be any justification for not asking the consequential relief while challenging the order of subordinate court even if in the fact, consequential relief is the main and substantial relief and in that situation, if party deliberately did not choose to claim consequential relief so as to convert the writ under Article 227 of the Constitution of India into the writ of certiorari under Article 226 of the Constitution of India only for the purpose of getting right of intra-court appeal then such writ petition can be dismissed on the ground of not seeking consequential relief or in appropriate case, the court may pass the order which ought to have been passed by taking help of Order 7 Rule 7 CPC and not to pass only an order

reopening the issue before the trial court and multiply the proceedings. We are holding above so because of the reason that in spite of the Supreme Court's deprecating the practice of wrong labelling the petition under both the Articles 226 and 227 of the Constitution of India, yet the petitions are filed under Article 226 when they ought not have been filed under Article 226 of the Constitution of India. The observations of the Hon'ble Supreme Court in Umaji Keshao Meshram(supra), which have been considered in subsequent judgments and approved by the Hon'ble Supreme Court also in Surya Dev Rai's case(supra) and in the case of Ashok K. Jha (supra) supports the view taken by us, as Hon'ble the Supreme Court observed 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 the 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 order sought to be appealed against is under Article 226.' The said observations of the Hon'ble Supreme Court are required to read to cover both situations, one where the petition is filed under Articles 226 and 227 Constitution of India both or labelled as filed under only Article 226 of the Constitution of India, then in fairness and justice to party, the petition is required to be treated under appropriate provision of law and if the fact justifies then the petition be treated to be under Article 227 of the Constitution of India, which can give justice to the party, by treating 'the party' in plural sense, that is, justice to both the parties and which can be done only by passing appropriate order, dismissing the petition, allowing the petition by setting aside the order of the subordinate court or by passing the order in substitution to the order passed by the subordinate court. Hon'ble the Supreme Court in Umaji Keshao Meshram also observed that 'where the substantial part of the order sought to be appealed against is under Article 226 then intra-court appeal lies.' This certainly means that where substantial part of the order sought to be appealed is under Article 227 of the Constitution of India, then that cannot be treated to be under Article 226 of the Constitution of India merely because such type of order could also have been

passed under Article 226 of the Constitution of India.

34. We revert back to the facts situation of these appeals wherein the orders passed by the subordinate courts, subordinate to the High Court, were challenged before the learned Single Judge in writ jurisdiction and the orders passed by the learned Single Judge are challenged in intracourt appeal, where question of maintainability of appeal has come up for consideration.

35. Since appeal is creature of statute and is maintainable only if provided by law and the intra-court appeal is provided under Rule 134(1) of the Rules of 1952, therefore, is necessary to quote Rule 134(1) of the Rules of 1952, which reads as under:

134(1) Appeal to the High Court from Judgment of Judges of the Court- An appeal shall lie to the High Court from the Judgment or a final order (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence of the exercise of criminal jurisdiction) of one Judge of the High Court.

36. Clause 15 of the Latest Patent of Bombay High Court is as under:

15. Appeal to the High Court from Judges of the Court.-And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional Jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High

Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made on or after the first day of February One thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as here in after provided.

37. The above two clauses, Rule 134(1) and Clause 15 of the Letters Patent are parimateria. Clause 15, was dissected by the Hon'ble Supreme Court in Umaji Keshao Meshram's case (supra) in para 9, which is as under:

An appeal shall lie to the High Court of Judicature at Bombay -

(1) from a judgment

(2) of one Judge of the High Court

(3) pursuant to Section 108 of the Government of India Act of 1915

(4) not being -

(a) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court,

(b) an order made in the exercise of revisional jurisdiction,

(c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act of 1915, or

(d) a sentence or order passed or made in the exercise of criminal jurisdiction.

38. In Sub-clause (c) of sub-para (4) of para 9 the words 'under the provisions of Section 107 of the Government of India Act of 1915', are there, for which the Division Bench of the Bombay High Court, Nagpur Bench in *Jagannath Ganbali Chikhale v. Gulabrao Raghobaji Bobde* 1965 Mh.LJ 426 held that 'after coming into force of the Constitution, the words 'Section 107 of the Government of India Act'(that is, of the Government of India Act of 1915) in Clause 15 should be read as ' Article 227 of the Constitution' inasmuch as Article 227 confers a power of superintendence as wide as was available to the High Court under Section 107 of the Government of India Act of 1915.' Then several Letters Patent Appeals from the judgment of the different Single Judges were preferred against the orders passed either under Article 226 or under Article 227 of the Constitution of India and issue about maintainability of these appeals were sent for consideration to the Full Bench of the three Judges of the Bombay High Court. The Full Bench of the Bombay High Court held that no appeal lay under Clause 15 of the Letters Patent against the judgment of the Single Judge of the High Court in a petition under Article 226 or under Article 227 of the Constitution of India. The Full Bench was of the view that both Articles 226 and 227 of the Constitution of India, in substance, provide for the same relief, namely, scrutiny of record and control of subordinate courts and the tribunals and, therefore, the exercise of jurisdiction under these Articles would fall within the expression 'revisional jurisdiction' or 'power of superintendence' and hence even under Clause 15 of the Letters Patent, appeal would be barred. That view of the Full Bench was reversed by the Hon'ble Supreme Court in *Umaji Keshao Meshram's case* (supra). Since Clause 15 of the Letters Patent of Bombay High Court is parimateria to the Rule 134(1) of the Rajasthan High Court Rules referred above and which have been clearly interpreted by the Hon'ble Supreme Court, therefore, in view of that binding decision, no appeal against any order passed by the Single Judge of the High Court is maintainable before the Division Bench if the order has been passed in exercise of the power of superintendence including the order passed by exercising power under Article 227 of the Constitution of India. Same is the view taken by the Hon'ble Supreme Court in all other judgments referred above. Therefore, any other interpretation and dissection of Sub-rule (1) of Rule 134 of the Rules of 1952 suggested by the counsels cannot be accepted as correct interpretation of Rule

134(1) of the Rules of 1952.

39. In fact the orders of the civil courts which could have been challenged under Section 115, CPC by way of revision petition before the High Court, are now being challenged in High Court's writ jurisdiction because of amendment in the Code of Civil Procedure. It cannot be disputed that the orders passed by the subordinate courts could have been challenged in revision under Section 115, CPC before amendment of the Code of Civil Procedure and in that situation, if any order would have been passed by the Single Judge of the High Court, its intra-court appeal would have been barred. And in view of the availability of the alternative remedy to challenge the order in revision under the provisions of the Code of Civil Procedure itself, the writ petition would not have been maintainable. Section 115 of the Code of Civil Procedure was amended with object to reduce the delay in the proceedings before Civil Court and that amendment in Section 115 narrowed the High Court's jurisdiction in entertaining revision petition, therefore, only the orders passed by the subordinate courts are now challenged in writ jurisdiction of the High Court. Therefore, also in fact the High Court exercises its revisional or supervisory jurisdiction only when any order of subordinate court is challenged in writ jurisdiction. Any other interpretation resulting into providing further appeal against the order passed by the High Court in such matters will frustrate the purpose for which the Code of Civil Procedure was amended. Therefore, substantially these orders are the orders which were passed earlier in revisional jurisdiction of High Court for which there was no remedy to challenge the orders passed by the High Court in revisional jurisdiction, are now sought to be challenged in intra-court appeal and if Rule 134(1) is interpreted to mean to provide appeal against such order, then that will result into interpreting Sub-rule (1) of Rule 134 of the Rules of 1952 providing challenge to High Court's order passed in revisional and supervisory jurisdiction where the legislature enacted the law to curtail the even first challenge to the order passed by the subordinate court by limiting the scope under Section 115, CPC. We are of the opinion that there is no justification and reason to construe Rule 134(1) of the Rules of 1952 as well as the nature of the order which can be passed by the High Court under Article 227 of the Constitution of India arising out of the order passed by the court subordinate to it which will nullify the object of legislation nor it can be interpreted to enlarge the

revisional jurisdiction of the High Court in the name of jurisdiction under Article 227 or reduce the supervisory jurisdiction of the High Court over subordinate courts to a subordinate jurisdiction subject to appellate jurisdiction of High Court itself. Such contradiction cannot exist in view of the legislative intend and clear provision of Section 134(1) as well as the nature of the orders which are passed by the High Court in writ jurisdiction when orders of the subordinate courts are challenged in writ jurisdiction in the High Court. At the cost of repetition, when wide and appropriate powers under Article 227 of the Constitution of India are available to the High Court then there cannot arise any question of exercise of jurisdiction under Article 226 of the Constitution of India unless so is required to be exercised for the reasons to be incorporated in the order passed by the Single Bench of the High Court. Neither label of the petition nor incorporation of the said label or mention of Article 226 of the Constitution of India in the order itself can change the nature of the order passed when order of subordinate court is challenged in the High Court.

40. In view of the above discussion, we are of the considered opinion that normally the Single Judge of the High Court, while exercising writ jurisdiction, passes any order, for subordinate courts' order/judgment, then that is under supervisory jurisdiction of the High Court and that is under Article 227 of the Constitution of India and that is not under Article 226 of the Constitution of India. To make an order under Article 226 of the Constitution of India, in such cases, the reasons are required to be mentioned in the order of the learned Single Judge for passing order not under Article 227 of the Constitution of India, but for passing the order under Article 226 of the Constitution of India. If the order is passed under Article 226 of the Constitution of India specifically, then that order may be appealable order under Sub-rule (1) of Rule 134 of the Rules of 1952.

41. It has been argued that the intra-court appeal against any order passed by the Single Judge of the High Court is provided under Rule 8-B of the 'High Court of Judicature for Rajasthan Case Flow Management Rules, 2006'. Rule 8-B of the Rules of 2006 is as under:

Rule 8-B: Appeals to Division Bench from judgment of Single Judge of Court (Later Patent Appeals (LPA) or similar appeals under High Court Acts).

An appeal to a Division Bench from judgment of a Single Judge may lie in the following cases:

(a) Appeals from interlocutory orders of the Single Judge in original jurisdiction matters including writs;

(b) Appeals from final judgment of a Single Judge in original jurisdiction;

(c) Other appeals permitted by any law to a Division Bench.

42. Before examining the rule, it will be appropriate to look into the background for framing the Rules of 2006. In Writ Petition Civil. 496/2002 Salem Advocate Bas Association, Tamil Nadu v. Union of India Hon'ble the Supreme Court, for the purpose of quicker dispensation of justice, constituted the Committee headed by Hon'ble Mr. Justice M. Jagannadhan Rao, Former Judge of the Supreme Court and Chairman Law Commission of India, for giving suggestions. The Committee submitted its suggestions which were considered by the Hon'ble Supreme Court to finalise the Rules for the purpose of dispensation of meaningful administration of Justice to the litigating public. The above facts are incorporated in the Notification No. S.O. 328, September 12, 2006 itself, which is the Notification for the Rules of 2006. These Rules are not the Rules for creating a right to appeal in favour of the litigant and Rule 8-B only recognises the intra-court appeal which is provided by any law. Sub-clause (a) deals with appeals from interlocutory orders of the Single Judge in original jurisdiction matters including passed in writ jurisdiction, which obviously is provided by Rule 134(1) of the Rules of 1952 as amended. Sub-clause (b) deals with appeals from final judgment of a Single Judge in original jurisdiction, that is also provided by Rule 134(1) referred above. Sub-clause (c) recognises the other appeals which lies, if permitted by any law, to a Division Bench. Presently, we are not seized with any order under appeal which is from interlocutory order passed by the Single Judge in original jurisdiction or any appeal from final judgment in original jurisdiction nor order under challenge is order for which appeal is permitted by any law. The Rules of 2006 are not creating appellate

form, nor it itself is giving any right to litigant of appeal against the order passed by the Single Judge, if not provided by any other law.

43. It is not in dispute that the Rules of 2006 have been framed by the High Court by exercising powers under Article 225 of the Constitution of India read with other provisions of laws, but the Rules cannot be read to mean which has not been intended and provided by rule. Firstly, the language of the Rule 8-B is clear and it nowhere provides that any appeal shall be maintainable before the Division Bench from the judgment of the Single Judge if passed in supervisory jurisdiction of the High Court, obviously, under Article 227 of the Constitution of India or passed in revisional jurisdiction.

44. We may sum up:

(i) the jurisdiction under Article 226 of the Constitution of India is original, extraordinary and discretionary jurisdiction of the High Court, whereas jurisdiction under Article 227 of the Constitution of India is not original jurisdiction of the High Court and is supervisory jurisdiction and has no fetters which are found in Article 226 of the Constitution of India,

(ii) Normally any order passed by the subordinate court is challenged then it can be challenged under Article 227 of the Constitution of India as it is specific provision in the Constitution of India for the appropriate remedy which cannot be equated with jurisdiction of High Court under Article 226 of the Constitution of India,

(iii) Mere label of petition or mention of Article 226 in the order is not decisive and normally such orders are required to be treated to be the orders passed by the Single Judge under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India, unless the party challenging the orders of the subordinate court specifically takes a plea in the writ petition that order has been challenged under Article 226 of the Constitution of India and not under Article 227 of the Constitution of India; and the Single Judges passes specific order after considering such plea of the party that the order as being passed is not under Article 227 of the Constitution of India but is under Article 226 of the Constitution of

India,

(iv) The intra-court appeal, as per Sub-rule (1) of Rule 134 of the Rules of 1952(as amended by Notification dated 28.6.2005) is not maintainable against any order passed by the High Court (Single Judge) in supervisory jurisdiction under Article 227 of the Constitution of India,

(v) Rule 8B of the High Court of Judicature for Rajasthan Case Flow Management Rules, 2006 is not the law itself providing right to appeal but the entire Rules of 2006 are only prescribing procedure for the High Court under Article 225 of the Constitution of India for the matters for which provisions have been made of appeal etc. by specific law which includes providing procedure for intracourt appeal provided by specific Rule 134 of the Rules of 1952.

45. In view of the reasons mentioned above, it is held that the orders passed by the learned Single Judge in these Special Appeals were passed under Article 227 of the Constitution of India exercising power of superintendence of the High Court which are not appealable orders and, therefore, all these appeals deserve to be dismissed as not maintainable.

46. Consequently, all these appeals are dismissed, as not maintainable.

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