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NC: 2026:KHC:26391
WP No. 30565 of 2025

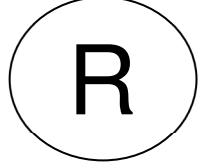
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04th DAY OF JUNE 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO.30565 OF 2025 (IPR)



BETWEEN:

KANPUR FLOWERCYCLING PRIVATE LIMITED,
ANKIT AGARWAL, DIRECTOR,
ARAZI NO.428, 429, BHUANTI,
PRATAPPUR, KALYANPUR,
KANPUR - 209 305,
UTTAR PRADESH, INDIA.
REP. BY ITS AUTHORIZED SIGNATORY,
MR. APURV MISAL.

... PETITIONER

(BY SRI. C.K. NANDAKUMAR, SENIOR COUNSEL FOR
SRI. SIVARAMAKRISHNAN.M.SIVASANKARAN., ADVOCATE)

AND:

M/S. SARATHI INTERNATIONAL INC.,
A PARTNERSHIP FIRM INCORPORATED BY
PARTNERSHIP DEED DATE 29 DECEMBER 2008,
HAVING ITS REGISTERED OFFICE AT
NO.MP 459/30, 30TH CROSS, 4TH BLOCK,
JAYANAGAR, BANGALORE-560 011.
AND AT 13 3-D MAIN I PHASE,
J.P.NAGAR, BENGALULRU-560 078.
REP. BY PARTNER.
SRI. SAPTHAGIRI.S.BOGGARAM.

... RESPONDENT

(BY SRI. DHANANJAY V. JOSHI, SENIOR COUNSEL FOR
SRI. PUSHKAR, ADVOCATE)

(MS. NAYANA TARA B.G, AMICUS CURIAE)



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER, RULE OR DIRECTION TO QUASH AND SET ASIDE THE ORDER DATED 2 AUGUST 2025 (ANNEXURE A) IN IA NO 7 IN COMM. O.S NO. 1093/2024 PASSED BY THE LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE. COMMERCIAL DIVISION. BENGALURU (CCH-89), AND RESTORE THE PROCEEDINGS PENDING IN COMM OS NO. 1093/2024 AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.03.2026, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, ORDER WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV ORDER

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I. Preface:

1. The present writ petition is directed against the order dated 02.08.2025, passed by the LXXXVIII Additional City Civil & Sessions Judge, Commercial Court, Bengaluru in Comm.O.S.No.1093/2024 [hereinafter referred to as the "Impugned Order"], whereby the plaint filed by the respondent/plaintiff seeking the relief of permanent injunction in a trademark infringement action has been returned for presentation before the Civil Court on the ground of lack of pecuniary jurisdiction.

2. The parties are referred to as petitioner/defendant and respondent/plaintiff, the petitioner being the defendant and the respondent being the plaintiff in Comm.O.S.No. 1093/2024.



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II. Brief Facts :

3. The brief facts are that the respondent/plaintiff instituted a suit in O.S. No.3909/2024 before the Civil Court seeking the relief of permanent injunction in respect of alleged infringement of its trademark "TULASI". An *ex parte* order of temporary injunction was granted by the learned Civil Court on 07.06.2024.

3.1 Upon appearance of the petitioner/defendant before the learned Civil Court, objections to the maintainability of the suit before the Civil Court were filed which led to a direction by the learned Civil Court on 02.07.2024 to the respondent/plaintiff to disclose the specified value of the suit under Section 12 of the Commercial Courts Act, 2015 [hereinafter referred to as the "CC Act"]. Pursuant thereto, the respondent/plaintiff filed a memo stating that the specified value exceeds Rs.3,00,000/-, on the basis of which the plaint came to be returned for presentation before the learned Commercial Court.

3.2 The plaint was thereafter re-presented and registered as Comm.O.S.No.1093/2024 before the learned Commercial Court, wherein the respondent/plaintiff also



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sought to justify the pecuniary jurisdiction of the said Court on the basis of the aforesaid valuation.

3.3 Subsequently, the respondent/plaintiff filed an application under Order VII, Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as the "CPC"], in I.A. No. 7 contending that the specified value of the suit is below Rs.3,00,000/- and sought return of the plaint to the Civil Court, placing reliance on an order passed in another suit in Comm.O.S.No.1197/2024.

3.4 The petitioner/defendant filed objections opposing the said application. The learned Commercial Court, by the Impugned Order dated 02.08.2025, allowed the said application and directed return of the plaint for presentation before the Civil Court.

4. The learned Commercial Court primarily placed reliance on an order dated 16.10.2024, passed in Comm.O.S.No.1197/2024, wherein, in a suit instituted by the respondent/plaintiff in respect of the same trademark, it was observed that the specified value of the respondent/plaintiff's right is below Rs.3,00,000/-. The



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learned Commercial Court proceeded on this basis to hold that the valuation of the present suit also falls below the pecuniary threshold prescribed for a Commercial Court and consequently the learned Commercial Court lacks jurisdiction to entertain the suit.

4.1 The learned Commercial Court further observed that in suits pertaining to intangible rights, the valuation as estimated by the respondent/plaintiff is relevant for determining jurisdiction and that the respondent/plaintiff, being *dominus litis*, is entitled to determine the valuation of the suit. On such reasoning, the Court concluded that the plaint is liable to be returned for presentation before the appropriate Civil Court.

5. The Impugned Order dated 02.08.2025 whereby the learned Commercial Court allowed I.A.No.7 filed by the respondent/plaintiff and directed return of the plaint for presentation before the Civil Court having jurisdiction, has been assailed before this Court.

6. The respondent/plaintiff then refiled the plaint before the Civil Court, which was listed as O.S.No.6026/2025.



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7. At the time the matter was initially examined, a stay of all further proceedings in the suit in Comm. O.S.No.1093/2024 and O.S.No.6026/2025 was directed.

7.1 Subsequently, while examining a batch of petitions¹ on the question of interplay between the CC Act and Article 227 of the Constitution of India, 1950 [hereinafter referred to as "the Constitution"], this Court had by its order dated 30.01.2026, directed as under:

"1. One of the issues that arise in the present petition is whether the interim orders passed by a Commercial Court are amenable to the jurisdiction of this Court under Article 227 of the Constitution of India.

2. This Court is hearing a batch of matters on the same issue which is now listed for hearing on 04.02.2026 including WP No.3571 of 2023 and connected matters.

3. Since the issue that arises is similar, list this petition along with WP No.3571/2023 and connected matters on 04.02.2026."

7.2 Arguments on the issue of challenge to the orders passed by the Commercial Court were addressed by the learned Senior Counsel appearing for the parties in this matter along with their contentions on the merits of this case.

¹ W.P.Nos.30565/2025,28142/2025, 33094/2025, 11023/2021 & 789/2022



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7.3. Ms. Nayana Tara B G, was appointed as Amicus Curiae [in the connected matter in W.P.No.28142/2025], on this issue of interplay of the CC Act and Article 227 of the Constitution, who also addressed the Court on the scope of intervention by the High Court under Article 227 in matters relating to the CC Act.

III. Contentions of the Petitioner/Defendant:

8. Mr. C.K. Nandakumar, the learned Senior Counsel for the petitioner/defendant contends that the Impugned Order is wholly erroneous and unsustainable. It is contended that the respondent/plaintiff had initially, filed a memo dated 08.07.2024 expressly estimating the specified value of the suit to be in excess of Rs.3,00,000/- on the basis of which the plaint was returned and presented before the learned Commercial Court. Thereafter, the respondent/plaintiff, sought amendment of the plaint to justify its pecuniary jurisdiction on the ground that the specified value exceeds Rs.3,00,000/-. Thus, it is contended that the respondent/plaintiff is now estopped from subsequently taking a contrary stand.



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8.1 The learned Senior Counsel submits that the filing of I.A.No.7 by the respondent/plaintiff seeking return of the plaint on the basis that the specified value is below Rs.3,00,000/- constitutes a clear *volte-face* and amounts to forum shopping and abuse of process of the Court. Such inconsistent stands would result in grave prejudice to the petitioner/defendant by compelling it to wander from one forum to another, thereby defeating the very object of the CC Act.

8.2 It is further contended that the learned Commercial Court has erred in placing reliance on an order passed in Comm.O.S.No.1197/2024, which involved a different defendant, and that the petitioner/defendant was not a party to the said proceedings, and therefore, the said order is neither binding nor relevant to the present case. The learned Senior Counsel further submits that the learned Commercial Court has failed to appreciate that the valuation of intangible rights under Section 12 of the CC Act is to be determined based on the respondent/plaintiff's own estimation of market value, which in the present case was



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stated to be above Rs.3,00,000/-, and there is no “proof” of such valuation, that was erroneously assumed.

8.3 The learned Senior Counsel for the petitioner/defendant has relied upon the judgment of a Co-ordinate Bench of this Court in ***Kirloskar AAF Limited vs. M/s.American Air Filters***², to contend that in a suit for injunction involving the infringement of a trademark, would exceed Rs.3,00,000/- and hence the jurisdiction would lie with the Commercial Court.

8.4 The learned Senior Counsel for the petitioner/defendant has further placed reliance on the judgment of High Court of Karnataka in ***Bangalore Blues Entertainment India Pvt. Ltd. v. One Ikigai Edutech Pvt. Ltd***³, ***Gangadharappa Munindra Kumar v. M/s Eaglesight Media Pvt. Ltd. & Ors.***⁴, and judgment of High Court of Delhi in ***Pankaj Ravjibhai Patel trading as Rakesh Pharmaceuticals v. SSS Pharmachem Pvt. Ltd.***⁵, to contend that the Court is duty-bound to scrutinize

² RFA 1/2015 - Order dated 25.09.2018

³ 2023 SCC OnLine Kar 177

⁴ 2022 SCC OnLine Kar 1859

⁵ 2023 SCC Online Del 7013



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the valuation of the suit to ensure that it is *bona fide* and not deliberately understated, and that any attempt by the respondent/plaintiff to undervalue the suit with a view to choose a particular forum or engage in forum shopping is impermissible in law.

8.5 The learned Senior Counsel for the petitioner/defendant has also placed reliance on the judgment of a Division Bench of the Delhi High Court in ***M/s. C.P. Rama Rao Sole Proprietor v. National Highways Authority of India***⁶, judgment of High Court of Karnataka in ***Obulapuram Mining Company Pvt. Ltd. v. R.K. Mining Pvt. Ltd.***⁷ (Dharwad Bench), and ***M/s Sanchaya Land and Estates Pvt. Ltd. v. HDFC Bank Ltd. & Ors.***⁸, to contend that a writ petition under Article 227 of the Constitution is maintainable against orders passed by Commercial Courts, particularly where the order suffers from jurisdictional error or results in manifest injustice.

8.6 Accordingly, it is prayed that the Impugned Order be set aside and the proceedings be restored to the file of the

⁶ 2024 SCC OnLine Del 7342

⁷ W.A. Nos. 100031/2019 c/w 100010/2019, order dated 15.02.2019

⁸ C.R.P. No. 679/2025, order dated 25.11.2025



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learned Commercial Court, and consequentially, the proceedings initiated before the Civil Court in O.S. No. 6026/2025 be quashed.

IV. Contentions of the Respondent/Plaintiff:

9. Mr. Dhananjay V. Joshi, the learned Senior Counsel for the respondent/plaintiff on the other hand contends that the present writ petition is liable to be dismissed as being devoid of merit. The learned Senior Counsel submits that supervisory jurisdiction under Article 227 is exercised only to keep subordinate courts within the bounds of their jurisdiction and cannot be invoked to correct mere errors of fact or law, especially where two views are possible and the subordinate court has adopted one such view. It is contended that though a petition under Article 227 of the Constitution is maintainable even against interlocutory orders passed by learned Commercial Court, the scope of such jurisdiction is extremely limited.

9.1 The learned Senior Counsel for the respondent/plaintiff further contends that the Impugned Order does not warrant any interference. It is submitted that the learned Commercial Court has rightly taken note of the order dated



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16.10.2024 passed by another Commercial Court in Comm.O.S.No.1197/2024, involving the same plaintiff and pertaining to the same trademark, wherein it was held that the specified value is below Rs.3,00,000/-, and consequently directed return of the plaint for presentation before the Civil Court.

9.2 It is further contended that the learned Commercial Court has correctly observed that the respondent/plaintiff, being *dominus litis*, is entitled to assert its claim and determine the valuation of the suit. In this regard, reliance is placed on Section 12(1)(d) of the CC Act, to submit that in suits relating to intangible rights, the specified value is the market value as estimated by the respondent/plaintiff and not the actual market value.

9.3. The learned Senior Counsel further submits that Civil Courts have, in other proceedings relating to the same trademark "TULASI", already accepted that the specified value is below Rs.3,00,000/-, including in O.S. No. 5928/2015 and O.S. No.3911/2024, thereby supporting the stand taken by the respondent/plaintiff.



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9.4 The learned Senior Counsel also relies on the judgment of Karnataka High Court in ***Bangalore Blues Entertainment India*** case, ***Gangadharappa Munindra Kumar***, and judgment of Delhi High Court in ***Pankaj Ravjibhai Patel*** to contend that the valuation as estimated by the respondent/plaintiff is determinative for the purpose of jurisdiction and that such estimation, unless shown to be arbitrary, ought not to be interfered with.

V. Contentions of the Amicus Curiae:

10. The learned Amicus has averred that the supervisory jurisdiction of the High Court under Article 227 is a constitutional power that cannot be curtailed. The scope of interference by the Courts have been clarified by the Supreme Court in several judgments. In this regard, reliance is placed on ***L. Chandra Kumar v. Union of India***⁹, and ***Surya Dev Rai v. Ram Chander Rai***¹⁰, ***Shalini Shyam Shetty and another v. Rajendra Shankar Patil***¹¹, to submit that while the power under Article 227 forms part of the basic structure and cannot be

⁹ (1997) 3 SCC 261

¹⁰ (2003) 6 SCC 675

¹¹ (2010) 8 SCC 329



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excluded, the same is to be exercised sparingly and only in cases of patent lack of jurisdiction or grave injustice.

10.1 The learned Amicus has emphasized that the scope of interference by the High Court under Article 227 of the Constitution, particularly in respect of interlocutory orders passed by Commercial Courts, is extremely limited. In support of the said contention, reliance is placed on the judgment of the High Court of Gujarat in ***State of Gujarat v. Union of India***¹², the judgment of the High Court of Calcutta in ***Deepak Polymers Private Limited v. Anchor Investments Private Limited***¹³, the judgment of the High Court of Delhi in ***M/s. Black Diamond Trackparts Pvt. Ltd. & Ors. v. Black Diamond Motors Pvt. Ltd.***¹⁴, and the judgment of the High Court of Madras in ***Ramanan Balagangatharan v. Rise East Entertainment Private Limited***¹⁵, to submit that supervisory jurisdiction is to be exercised sparingly and only in cases of patent lack of

¹² 2018 SCC OnLine Guj 1515

¹³ 2021 SCC Online Cal 4323

¹⁴ 2021 SCC OnLine Del 3946

¹⁵ 2022 SCC OnLine Mad 1300



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jurisdiction or manifest injustice, and not to correct mere errors or substitute the view taken by a subordinate court.

VI. Issues for Consideration:

11. In view of the contentions of the parties, the following issues arise for consideration:

(i) Whether the Impugned Order passed by the Commercial Court warrants interference in exercise of jurisdiction under Article 227 of the Constitution of India?

(ii) In what circumstances should this jurisdiction be exercised by the Court in a dispute under the CC Act?

(iii) Whether the respondent/plaintiff, having earlier asserted that the specified value of the suit exceeds Rs.3,00,000/- and invoked the jurisdiction of the learned Commercial Court, can subsequently seek the return of the plaint by contending that the value is below Rs.3,00,000/-?

(iv) Whether the learned Commercial Court was justified in relying upon the order passed in Comm. O.S. No. 1197/2024 to hold that it lacks pecuniary jurisdiction to try and entertain the present suit without ascertaining specified value?



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VII. Analysis and Findings :

A. Scope of Interference under Article 227 of the Constitution:

(i) Scope and limits of High Court's supervisory jurisdiction under Article 227:

12. The power under Article 227 of the Constitution of India is an extension of the jurisdiction of the Courts to exercise judicial review. It is a basic feature of the Constitution to exercise its constitutional authority of superintendence and supervision to adjudge the validity of orders passed by the District Courts. The Supreme Court in ***L. Chandra Kumar*** case held that the power of judicial review vested in the High Courts under Articles 226 and 227 of the Constitution, including the power of superintendence over subordinate courts and tribunals, forms part of the basic structure of the Constitution and cannot be ousted or excluded by legislative enactments. It was further held that the High Courts must retain the power to exercise supervisory jurisdiction to ensure that decisions of subordinate courts and tribunals conform to constitutional and legal standards. The relevant extract of the ***L. Chandra***



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Kumar case is set out below:

"78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. [See Chapter VII, "The Judiciary and the Social Revolution" in Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. **The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it.** It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. **It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence.** The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. **Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the**



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High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

[Emphasis Supplied]

12.1 The Supreme Court in ***Surya Dev Rai*** case held that the supervisory jurisdiction of the High Court under Article 227 of the Constitution remains unaffected by statutory limitations on revisional jurisdiction and extends even to interlocutory orders passed by subordinate courts. It was further held that such jurisdiction is to be exercised sparingly and only in cases where the subordinate court has acted without jurisdiction, in excess of jurisdiction, or in a manner resulting in grave injustice. The Court clarified that Article 227 of the Constitution cannot be invoked to correct mere errors of fact or law, and the High Court cannot act as an appellate court to reappraise evidence or substitute its



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own view. The relevant extract of the ***Surya Dev Rai*** case is set out below:

"38. *Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:*

(1) *Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.*

(2) ***Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.***

(3) *Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) ***Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied:*** (i) *the error is manifest and apparent on the face of the proceedings such as when it is based on clear*



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ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. **Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.**

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappraisal or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a



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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."

[Emphasis Supplied]

(ii) Maintainability:

13. A Division Bench of the Delhi High Court in ***M/s. C.P. Rama Rao*** case has held that a petition under Article 227 of the Constitution is maintainable against orders passed by Commercial Court, and that the jurisdiction of the High Court under Article 227 of the Constitution, being a constitutional power forming part of the basic structure, cannot be curtailed or excluded. While discussing the judgments in ***M/s. Estralia Rubber v. Dass Estate [Pvt.] Ltd.***¹⁶ case of the Supreme Court, the ***Black Diamond Trackparts*** case and the judgment of a Coordinate Bench of Bombay High Court in ***Pravinchandra v. Hemant Kumar***¹⁷, it was held that the expression "petition" under Section 8 does not include a petition under Article 227 of

¹⁶ (2001) 8 SCC 97

¹⁷ 2023:BHC-NAG:16159



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the Constitution, and therefore, the bar against revision or petition does not operate to restrict the supervisory jurisdiction of the High Court. The relevant extract of the

M/s. C.P. Rama Rao case is set out below:

"7. It is in the aforesaid backdrop that Dr. George, the learned amicus submitted that in the absence of the petitioner having a remedy under Section 37 read along with Section 13 of the **Commercial Courts Act, 2015**, it would be justified in seeking to invoke this Court's power of superintendence conferred by Article 227 of the Constitution.

8. As the learned amicus rightly points out, **not only is the Article 227 power an extension of our jurisdiction to exercise judicial review and the same being a basic feature of the Constitution, it falls upon this Court in exercise of its constitutional authority of superintendence and supervision to adjudge the validity of orders passed by the District Courts.** Dr. George in this regard also invited our attention to the decision in *Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd.* and where while dealing with the power of the High Court to correct orders made by a commercial court, we had enunciated the following principles which would guide:

xxx

xxx

xxx

12. 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."

9. The aspects noticed by us **in Black Diamond also find resonance in a judgment rendered by the High Court**



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of Bombay in Pravinchandra v. Hemant Kumar and where it was held:

"15. Though Section 8 of the Commercial Courts Act, 2015, creates a bar against revision or petition against an interlocutory order, that however by itself would not interdict the intervention by the High Court, when it finds that the facts merit judicial intervention and in the instant matter specifically so, in light of the order in Commercial Appeal No. 2/2019 by the learned Division Bench, granting liberty to the petitioners/plaintiffs to move an application for amendment considering the subsequent events. **Section 8 of the Commercial Courts Act, has been considered by the learned Division Bench of the Delhi High Court in Black Diamond Trackparts Pvt. Ltd. (supra),** wherein it has been held that word 'petition' in Section 8 of the Commercial Courts Act, 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 and therefore would not bar the exercise of the jurisdiction of this Court under Article 227 of the Constitution of India. **I, am in complete agreement with what has been said in Black Diamond Trackparts Pvt. Ltd. (supra), for holding otherwise, would amount to a statutory provision creating an embargo upon the constitutional provisions, which position cannot be countenanced in law.**"

10. We also bear in mind the well settled contours of the power which the Constitution confers upon a High Court by virtue of Article 227. While it is true that the said power of superintendence does not amount to an unrestricted prerogative or one intended to be wielded to correct every erroneous decision rendered by a subordinate court or tribunal, the salutary power so enshrined **in that Article has been consciously placed as being liable to be exercised where a failure to correct may result in grave injustice.** Although the scope of the power vested in a High Court by virtue of Article 227 is well settled, we deem it apposite to notice the decision **in Estralla Rubber v. Dass Estate [Pvt.] Ltd. and where the Supreme Court had explained the power of superintendence in the following words:—**

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. **The exercise of**



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power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [(1954) 1 SCC 51 : AIR 1954 SC 215 : 1954 SCR 565]. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly



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exceeded its jurisdiction under Article 227 in passing the impugned order.”

[Emphasis Supplied]

(iii) Supervisory jurisdiction under Article 227 to be exercised sparingly, not as an appellate remedy:

14. The Supreme Court in ***Shalini Shyam Shetty*** case cautioned that the jurisdiction of the High Court under Article 227 is supervisory in nature and must be exercised sparingly to keep subordinate courts within the bounds of their authority. It was further held that such jurisdiction cannot be invoked to act as an appellate forum or to correct mere errors of fact or law, and interference is warranted only in cases of patent perversity, gross failure of justice, or violation of fundamental principles of law. The Court also reiterated that the power under Article 227, being part of the basic structure although cannot be curtailed by statute, but its exercise is subject to strict judicial discipline. The relevant extract of the ***Shalini Shyam Shetty*** case is set out below:

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode



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of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in **Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".**

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been **a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the**



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basic principles of natural justice have been flouted.

(h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. **In other words the jurisdiction has to be very sparingly exercised.***

(i) **The High Court's power of superintendence under Article 227 cannot be curtailed by any statute.** It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) *It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. **At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.***

(k) *The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

(l) *On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of



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the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

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66. **We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev [(2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.**

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

[Emphasis Supplied]



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(iv) Article 227 confined to jurisdictional errors causing grave injustice, not for correcting trivial errors:

15. A Division Bench of the High Court of Madras in ***Ramanan Balagangatharan*** case while examining an order of a Single Judge exercising original jurisdiction, held that the supervisory jurisdiction under Article 227 of the Constitution is to be exercised only to keep subordinate courts within the bounds of their jurisdiction, and interference is warranted only where the subordinate court has acted without jurisdiction, in excess of jurisdiction, or in a manner resulting in grave injustice. It was reiterated that such jurisdiction cannot be invoked to correct mere errors of fact or law and is confined to cases where the error is manifest on the face of the record and has resulted in gross failure of justice. The relevant extract of the ***Ramanan Balagangatharan*** case is set out below:

"4. It is settled law that the supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When the Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by



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law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It is also settled law that the supervisory jurisdiction under Article 227 of the Constitution may not be exercised to correct mere errors of fact or of law and may be exercised only when the following requirements are satisfied:

(i) **the error is manifest and apparent** on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) **a grave injustice or gross failure of justice has occasioned thereby.**

5. The supervisory jurisdiction under Article 227 can be exercised by the High Court only in the case of Subordinate Courts. The learned Single Judge of this Court cannot be termed as a subordinate to High Court. When the order passed by the learned Single Judge cannot be termed as an order passed by the Court Subordinate to High Court, **Article 227 has no application.** In such view of the matter, the ratio laid down by the Gujarat High Court is not applicable to the facts and circumstances of the present case.”

(v) Article 227 jurisdiction not barred by Section 8 of the CC Act. Interference to be limited to errors causing manifest injustice:

16. A Division Bench of the Delhi High Court has examined the issue of interference by the High Court in the context of the CC Act. In the ***Black Diamond Track parts***^{18*} case while examining Section 8 of the CC Act. It was held that

^{18*}A challenge to the ***Black Diamond Track parts*** was repelled by the Supreme Court in the case of M/S. BLACK DIAMOND TRACKPARTS PVT. LTD. & ORS. Vs. M/S. BLACK DIAMOND MOTORS PVT. LTD in SLP(c) Nos.17030-17031/2021, by its order dtd. 13.11.2021.



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the bar contained in Section 8 of the CC Act against revision or petition does not extend to proceedings under Article 227 of the Constitution, as such jurisdiction is constitutional in nature and cannot be curtailed by statute. It was further held that the expression "petition" in Section 8 refers only to revision petitions and not to petitions under Article 227, and therefore, a petition under Article 227 challenging orders of Commercial Courts is maintainable. The relevant extract is set out below:

"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."

*10. 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***



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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.

11. *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 v. 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 v. Vakhatsinghji Vajesinghji, Vaghela AIR 1968 SC 1481, Jetha Bai and Sons, Jew Town, Cochin v. Sunderbas Rathenai (1988) 1 SCC 722, State of H.P. v. Dhanwant Singh (2004) 13 SCC 331 and Union of India v. 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 v. Union of India (1997) 3 SCC 261,***



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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.

12. 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."*

[Emphasis Supplied]

16.1 A Division Bench of the High Court of Gujarat in the ***State of Gujarat*** case held that the bar contained under Section 8 of the CC Act against entertaining revision or petition against interlocutory orders does not extend to petitions under Article 227 of the Constitution, and therefore, the supervisory jurisdiction of the High Court remains unaffected. It was further held that while such jurisdiction is maintainable even against interlocutory orders passed by Commercial Courts, it is to be exercised sparingly and only in cases of patent jurisdictional error or



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manifest injustice, and not to correct mere errors of fact or law or to substitute the view taken by the subordinate court.

The relevant extract of the ***State of Gujarat*** case is set out below:

"40. Similarly, the decision of Delhi High Court in the case of *HPL (India) Limited v. QRG Enterprises (supra)*, shall not be applicable to the facts of the case on hand and/or the issue involved in the present petition. Even before the Delhi High Court, the dispute was with respect to the exercise of powers under Section 13 of the Commercial Courts Act.

41. In view of the above and for reasons stated above and considering the decisions of Hon'ble Supreme Court referred to hereinabove, our conclusions in nutshell are as under:—

(1) The bar contained under Section 8 of the Commercial Courts Act against entertainability of "civil revision application or petition" against the interlocutory orders passed by the subordinate/Commercial Courts, shall not be applicable to the writ petitions under Article 227 of the Constitution of India.

(2) **The bar contained in Section 8 of the Commercial Courts Act shall not affect the supervisory jurisdiction of the High Courts under Article 227 of the** Constitution of India in respect of the orders, including interlocutory orders, passed by the Commercial Court and writ petitions under Article 227 of the Constitution of India may be entertainable, **however, subject to the following observations and restrictions:—**

(a) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned



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thereby, the High Court may step in to exercise its supervisory jurisdiction.

(b) The supervisory jurisdiction under Article 227 of the Constitution of India may not be exercised to correct mere errors of fact or of law and may be exercised only when the following requirements are satisfied:—

(i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby

(c) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(d) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.



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(3) Though while exercising supervisory jurisdiction under Article 227 of the Constitution of India, the High Court may annul or set aside the act, order or proceedings of the subordinate courts, it may not substitute its own decision in place thereof.

(4) 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.

(5) That while exercising powers under Article 227 of the Constitution of India, the High Court would have to consider the observations made by the Hon'ble Supreme Court in Paragraph-39 in the case of Surya Dev Rai v. Ram Chander Rai (*supra*), which are as under:

"39. Though we have tried to lay down broad principles and working rules the fact remains that the parameters for exercise of jurisdiction under Article-226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. **The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done,** if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge".

[Emphasis Supplied]



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vi) As in the A & C Act, the remedy to be exercised where the party is remediless:

17. The learned *Amicus Curiae* has in addition to submitting on the aspects referred to above, has contended that the scheme of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "A&C Act") contemplates expeditious resolution of disputes with minimal judicial intervention, the Act being a self-contained and exhaustive code. It was submitted that supervisory jurisdiction under Articles 226 and 227 ought not to be routinely invoked such as is the case in arbitral matters and may be exercised only in exceptional situations, such as where a party is rendered remediless or where manifest bad faith is demonstrated. In this regard, reliance was placed on the judgment in the case of ***Deep Industries Ltd. v.***

ONGC.¹⁹ *The relevant extract is below:*

"15. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time-limits set down for disposal of the arbitral proceedings themselves but time-limits have also been set down for Section 34 references to be decided. Equally, in Union of India v. Varindera Constructions Ltd. [Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111 : (2020) 1 SCC (Civ) 277] , dated 17-9-2018, disposing of SLP (C) No. 23155

¹⁹ (2020) 15 SCC 706



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of 2013, this Court has imposed the self same limitation on first appeals under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.

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17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, **we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.**

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23. **We reiterate that the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a special Act and a self-contained code dealing with arbitration. This Court in Fuerst Day Lawson Ltd. [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333: (2011) 4 SCC (Civ) 178], has specifically held as follows: (SCC p. 371, para 89)**

"89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan [P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672]) was held to be a self-contained code. **Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression [S.N. Srikantia & Co. v. Union of**



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India, 1965 SCC OnLine Bom 133 : AIR 1967 Bom 347] of Tulzapurkar, J., that it carries with it

'19. ... a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done. ...' (S.N., Srikantia & Co. case [S.N. Srikantia & Co. v. Union of India, 1965 SCC OnLine Bom 133 : AIR 1967 Bom 347] , SCC OnLine Bom para 19)

In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded."

*What becomes clear is that **had the High Court itself disposed of the first appeal in the present case, no Article 227 petition could possibly lie – all that could perhaps have been done was to file an LPA before a Division Bench of the same High Court.** This, as we have seen, has specifically been interdicted by Fuerst Day Lawson Ltd. [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] Merely because, on the facts of this case, the first appeal was disposed of by a court subordinate to the High Court, an Article 227 petition ought not to have been entertained.*

***24. Mr Rohatgi is also correct in pointing out that the legislative policy qua the general revisional jurisdiction that is contained by the amendments made to Section 115 CPC should also be kept in mind when the High Courts dispose of petitions filed under Article 227. The legislative policy is that no revision lies if an alternative remedy of appeal is available.** Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. These amendments were considered in Tek Singh v. Shashi Verma [Tek Singh v. Shashi Verma, (2019) 16 SCC 678 : (2020) 2 SCC (Civ) 753] in which this Court adverted to these amendments and then stated: (SCC p. 681, paras 5-6)*

"5.... A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders.

6.... Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In



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DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh [DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807] this Court held: (SCC pp. 811-12, para 5)

*'5... The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. **The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.**' (SCR at p. 373)...."*

[Emphasis Supplied]



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17.1 A similar view has been taken by the Supreme Court in the case of ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.***²⁰ While examining the A&C Act, the Supreme Court has also cautioned against judicial interference beyond as is prescribed under the statute. It was held as follows:

"12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under:

"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

(Emphasis Supplied)

The non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

13. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.

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17. Thereafter, Respondent 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Articles 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of

²⁰ (2022) 1 SCC 75



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challenge under Section 34. The opening phase of Section 34 reads as

"34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)".

(Emphasis Supplied)

The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.

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18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In *Nivedita Sharma v. COAI* [*Nivedita Sharma v. COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — *L. Chandra Kumar v. Union of India* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . **However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency /instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.**"



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(Emphasis Supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

19. In this context we may observe *Deep Industries Ltd. v. ONGC* [*Deep Industries Ltd. v. ONGC*, (2020) 15 SCC 706] , **wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under :** (SCC p. 714, paras 16-17)

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

(Emphasis Supplied)



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20. In the instant case, Respondent 1 has not been able to show exceptional circumstance or "bad faith" on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending."

[Emphasis Supplied]

B. Article 227 and Commercial Disputes:

18. The CC Act was enacted in view of the increasing pendency of commercial cases. It was observed in the Statement of objects and reasons of the CC Act, that there was required an effective mechanism for speedy and efficient disposal of commercial disputes, including by amendments to the CPC, Arbitration and Conciliation Act, 1996 and other statute. When this writ petition was initially considered, a doubt was expressed as to whether a petition under Article 227 of the Constitution would be maintainable and the extent of interference to be exercised by the Court, since challenges to interlocutory orders passed by the Commercial Court were curtailed under the CC Act.



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19. The reservation of the Court was also based on the fact that the CC Act has inbuilt provisions and restrictions on challenges under the Act, such as Section 8 and Section 13, and given the legislative intent, permitting frequent recourse to Article 227 would not have been envisaged.

19.1 Section 8 of the CC Act is a non-obstante provision which states that no civil revision petition/application will be filed against an interlocutory order passed under the CC Act. It further states that any challenge shall only be raised in an appeal under Section 13 of the CC Act. Thus, the remedy provided for under Section 115 CPC has been done away with, in the following terms:

"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."

[Emphasis Supplied]

19.2 Section 13 of the CC Act provides for challenges to the orders of the Commercial Courts and Commercial Division by providing for the remedy for challenge only to final



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orders and judgment. It also restricts all such challenges to a limitation of sixty days. While sub-section 1A of Section 13 limits challenges under the CC Act to only those interlocutory orders which are amenable to challenge under Order 43 of the CPC and Section 37 of the A&C Act, sub-section (2) of Section 13 of the CC Act provides that no appeal shall lie from any order or judgment other than is set out in the CC Act. Section 13 of the CC Act is set out below:

*"13. Appeals from decrees of Commercial Courts and Commercial Divisions — (1) Any person aggrieved by the **judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days** from the date of judgment or order.*

*(1A) Any person aggrieved by the **judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or,** as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court **within a period of sixty days from the date of the judgment or order:***

*Provided that **an appeal shall lie from such orders passed** by a Commercial Division or a Commercial Court that are **specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act** and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).*

*(2) **Notwithstanding anything contained** in any other law for the time being in force or Letters Patent of a High Court, **no appeal shall lie from any order or decree of***



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a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

[Emphasis Supplied]

19.3 It is apposite to refer to a judgment of the Division Bench of this Court in ***Trinetramilan Product Protection Solutions Private Limited vs. A.S. Narayanan***²¹. While examining an issue as to the maintainability of an appeal under the CC Act, it was held as under:

*"9. In our view, the question of whether an appeal lies against a commercial court's order that is not enumerated in Order XLIII of the CPC is no longer res integra. The same is covered by the decision of the Supreme Court in *Kandla Export Corporation & Anr. v. M/s. OCI Corporation & Anr.*¹, whereby the Supreme Court has held that the **scope of an appeal under Section 13(1) of the Commercial Courts Act is controlled by the proviso to the said Sub-section.** It is material to note that the proviso to Subsection(1A) of Section 13 of the CC Act is identically worded as the proviso of Sub-section (1) of Section 13 as in force prior to the amendment in the year 2018. The relevant extract of the said decision is set out below:*

*13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in *CIT v. Indo-Mercantile Bank Ltd.* [*CIT v. Indo-Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : AIR 1959 SC 713], thus: (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)*

²¹ NC:2026:KHC:5050-DB



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"9. ... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

'8. ... it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.'

Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in Abdul Jabar Butt v. State of J&K [Abdul Jabar Butt v. State of J&K, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404] , SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in Ram Narain Sons Ltd. v. CST [Ram Narain Sons Ltd. v. CST, (1955) 2 SCR 483 : AIR 1955 SC 765] , said: (SCR p. 493 : AIR p. 769, para 10)

'10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'

10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows: (IA p. 122 : SCC OnLine PC)

'... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude, from it by implication what clearly falls within its express terms.'

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within



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the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also Toronto Corpn. v. Attorney-General of Canada [Toronto Corpn. v. Attorney-General of Canada, 1946 AC 32 (PC)] , AC p. 37.)”

14. *The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. **It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.***

15. *Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.”*

10. **It is also relevant to refer to the provisions of subsection (2) of Section 13 of the CC Act. The said subsection contains a non obstante clause that clearly indicates that its provisions would have an overriding effect. It expressly provides that, notwithstanding anything contained in any other law for the time being in force or the Letters Patent of a High Court, no appeal would lie from any order or decree of a Commercial Division or a Commercial Court otherwise than in accordance with the provisions of the CC Act. The Supreme Court had examined the import of the proviso to Section 13 of the CC Act, which is now set out as the proviso to Sub-section (1A) of Section 13 of the CC Act.”**

[Emphasis Supplied]



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19.4 As set out in paragraph 16 and 16.1 above, the Division Bench of Delhi High Court in ***Black Diamond Trackparts*** case and the Gujarat High Court in the ***State of Gujarat*** case has also cautioned that such jurisdiction is to be exercised sparingly, particularly in commercial matters, and only in cases of patent jurisdictional error or manifest injustice, so as not to defeat the object of expeditious disposal under the CC Act.

20. Clearly the intention of the legislature was not to have an all-pervasive access to the challenges made to the CC Act. Thus, the question that would arise is whether parties should be able to circumvent these statutory provisions by making frequent recourse to Article 227 of the Constitution, to challenges under the CC Act.

21. An examination of the law as set out hereinabove reflects that:

- (i) It is important for the Courts to ensure that the power under Article 227 be exercised to ensure compliance with the objectives of the enactment of the CC Act remains intact.



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- (ii) The powers of superintendence under Article 227 are circumscribed and supervisory jurisdiction is to be exercised sparingly and cannot be used to substitute the judgment of a Subordinate Court or Tribunal to correct trivial errors.
- (iii) Article 227 of the Constitution should be used for jurisdictional errors causing grave injustice. The power should be exercised where a party is left remediless.
- (iv) What has been barred by Section 115 of the CPC through Section 8 of the Commercial Courts Act, cannot be subsequently revived by use of powers under Article 227 of the Constitution.
- (v) Decrees and judgments are amenable to challenge within the period of limitation as is prescribed under Section 13 of the CC Act.
- (vi) Interlocutory Orders passed which are amenable to challenge under Order 43 of the CPC and Section 37 of the CC Act, may be challenged by way of an appeal under Section 13 of the CC Act as well.



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(vii) Interference in petitions arising from Commercial Courts is limited to only instances where non-correction under Article 227 will lead to manifest injustice. Some circumstances would be when errors (a) are incapable of correction at a later stage, and (b) give rise to the level of patent perversity or jurisdictional failure.

22. To facilitate the objective of the Commercial Courts Act, that is, speedier disposal of commercial matters, it is suggested that a separation of matters under Article 227 of the Constitution be undertaken for petitions arising from commercial cases. This could include the creation of a separate roster to further implement the objectives of the Act or by creation of a system for procedural constraints including an examination as to whether interference is requisite for fewer and shorter adjournments and timelines for disposal.

C. Availability of Alternate Remedy of Appeal provided for under the CC Act:

23. Although no submissions were made by either party on this aspect, it was imperative to examine this issue as



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well. In the present case, the challenge by the petitioner/defendant is to an application under Order 7, Rule 10 and 10A of the CPC, that was allowed by the learned Commercial Court, whereby it was directed that the plaint be returned under Order 7, Rule 10 of the CPC and a date was fixed for the parties to appear before the learned Commercial Court.

24. Sub-rule (a) Order 43 Rule 1 CPC provides that an Appeal is required to be filed to challenge an order passed under Order 7 Rule 10 CPC, directing the return of the plaint except where the procedure has been followed by the Court under Order 7 Rule 10A CPC in the following terms:

*"1. **Appeal from orders.**—An appeal shall lie from the following orders under the provisions of section 104, namely: —*

*(a) an order under **rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in rule 10A of Order VII has been followed**"*

[Emphasis Supplied]

25. It is thus apposite to extract Order 7 Rule 10 and 10A of the CPC below:

"10. Return of plaint.-(1)** Subject to the provisions of rule 10A, **the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.



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Explanation.- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint. On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing, so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and



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(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.”

[Emphasis Supplied]

26. In the present case, an application under Order 7, Rule 10 and 10A of the CPC was filed by the respondent/plaintiff. This Application was allowed by the learned Commercial Court and the plaint was directed to be returned. Sub-section (5) of Order 7 Rule 10A of the CPC bars the filing of an appeal against such an order. In addition, since the procedure under Order 7, Rule 10A of the CPC was followed by the learned Commercial Court, this order is not an appealable order.

D. Valuation of Intangible Rights and Bona Fides of Valuation under Section 12(1)(d) of the CC Act:

27. It is apposite to now examine as to whether the Impugned Order warrants interference, including whether an alternate remedy of filing of an Appeal has been provided for in the CC Act for such an order. The learned Senior Counsel for the petitioner/defendant has contended that a



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jurisdictional error has been made by the learned Commercial Court, which warrants interference, while learned Senior counsel for the respondent/plaintiff contends otherwise.

28. Section 2(1)(c)(xvii) of the CC Act, provides that all intellectual property disputes would be commercial disputes in the following terms:

*"2. **Definitions.**:- (1) In this Act, unless the context otherwise requires,*

(a) xxx xxx xxx

(b) xxx xxx xxx

(c): "commercial dispute" means a dispute arising out of—

xxx

xxx

xxx.

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;"

28.1 Section 2(i) of the CC Act defines Specified Value as:

*"(i) "Specified Value", in relation to a commercial dispute, shall mean **the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than three lakh rupees** or such higher value, as may be notified by the Central Government."*

[Emphasis Supplied]

29. Both these provisions are to be examined in light of the provisions of Section 12 of the CC Act which provides



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for how specified value has to be determined. Section 12(1)(d) of the CC Act sets out that the specified value in the case of an intangible right would be estimated by the determination of the market value of the rights while Sub-sections (a), (b) and (c) provide for determination of specified value in the cases of recovery of money; interest in movable property and interest in immovable property respectively. The relevant provision is below:

"12. Determination of Specified Value.— (1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:-

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value;

[Emphasis Supplied]



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30. An examination of the plaint initially filed in OS No. 3909/2024 before the learned Civil Court was filed without any specified value being set out even though the matter related to a dispute covered by Section 2(1)(c)(xvii) of the CC Act as a Commercial Dispute. Paragraph 37 of the plaint dated 06.06.2024 is set out below:

*"37. It is submitted that for the purpose of jurisdiction and court fees, this Suit is valued and requisite fee has been paid by the Plaintiff firm as per the valuation slip attached. **The Plaintiff firm undertakes to pay any additional Court fees under prayer (c); if more amounts is awarded by this Hon'ble Court by way of damages after ascertaining the accounts.**"*

[Emphasis Supplied]

30.1 In view thereof, the learned Trial Court directed the respondent/plaintiff to file an estimation of the specified value, by its order dated 02.07.2024. The respondent/plaintiff subsequently filed a memo on 08.07.2024 estimating the market value as more than Rs.3 lakhs. The relevant extract of the memo is below:

"Memo

*As per the directions of this Hon'ble Court, the undersigned counsel hereby submits before this **Hon'ble Court that the Plaintiff's estimate of the market value of the present suit is more than Three Lakhs Rupees.**"*

[Emphasis Supplied]



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30.2 By its order dated 08.07.2024, the learned Civil Court returned the plaint to be presented before the Commercial Court since the suit was valued at more than Rs.3 lakhs. The suit was then registered as Comm. O.S. No.1093/2024.

30.3 As a consequence thereof, the respondent/plaintiff amended its plaint in Comm.O.S.No.1093/2024, to add paragraph 36A by which it was stated that the value of the plaint was more than Rs.3 lakhs. It was stated that the valuation of the rights of the plaintiff was not stated therein earlier, hence the requirement for the amendment. The relevant extract of application, IA No.5 of 2024 filed for the proposed amendment and its Affidavit in support thereof, is set out below:

**"APPLICATION FILED ON BEHALF OF THE
PLAINTIFF UNDER ORDER VI RULE 17 WITH
SECTION 151 OF THE CODE OF CIVIL PROCEDURE
CODE, 1908**

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2. Add: after paragraph no. 36, the words:

*36A. Plaintiff submits that the present suit is commercial in nature as defined under the Section 2(c)(xvii) of the Commercial Courts Act, 2015, as the said suit pertains to intellectual property rights relating to registered trademark. It is submitted that as per Section 12(d) of the Commercial Courts Act, 2015, **the market value of the trademark "TULASI" as estimated by the Plaintiff for the purpose of determining the specified value of***



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the subject matter is above Rs.3,00,000/- (Rupees Three Lakhs Only). Therefore, the present suit is within the jurisdiction of the Commercial Courts, Bangalore.”

AFFIDAVIT

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2. I humbly submit that the averments made in the *Plaint* may be read as a part and parcel of this application.

3. I submit that on 08.07.2024, the Hon'ble XVIII Additional City Civil and Sessions Judge in Bengaluru ordered for the return of the *plaint* numbered O.S.No.3909/2024 noting that it does not have the pecuniary jurisdiction to hear the matter and that it is to be filed before this Court. It is pertinent to note that the *Plaint* was returned on 07.08.2024 and on 08.08.2024, the returned *Plaint* has been filed before this Hon'ble Court in its original form without any modifications. **However, the development in the present suit that had taken place before the Hon'ble XVIII Additional City Civil and Sessions Judge at Bengaluru and the valuation of the estimated rights of Plaintiff's in this present suit is not captured in the *Plaint*.** Therefore, it has become necessary for the Plaintiff to file the present application seeking to amend the *Plaint* as prayed for in the Application.

4. I submit that the above application is filed for the above Bonafide reason and not with a view to protract the proceedings. I submit that if the above application is not allowed, the Plaintiff will be put to irreparable loss and injury to their valuable and legitimate rights. On the other hand, no loss or hardship will be caused to the Defendant if the above application is allowed.”

[Emphasis Supplied]

31. However, thereafter, on 28.01.2025 the respondent/ plaintiff filed I.A.No.7 of 2025 under Order 7 Rule 10 and Rule 10A of the CPC seeking return of *plaint* and fixing of a date for appearance of the parties before the City Civil Court, averring that the specified value is below Rs.3 lakhs.



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As set out above, reliance was placed on the order dated 16.10.2024 of a Co-ordinate Bench in Comm. O.S.No.1197/2024. It was stated therein that based on the Commercial Court's order in Comm.O.S.No.1197/2024, the value of the plaintiff's intangible rights are less than Rs.3 lakhs. The relevant extract of I.A.No.7 is set out below:

**"APPLICATION FILED ON BEHALF OF THE
PLAINTIFF UNDER ORDER VII RULE 10 AND 10A
READ WITH SECTION 151 OF THE CODE OF CIVIL
PROCEDURE CODE, 1908**

*For reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Commercial Court **may be pleased to return the plaint to be presented before the Hon'ble City Civil Court, Bengaluru and fix a date for appearance, to enable both the parties to be present before the Hon'ble City Civil Court, Bengaluru on the given date, and pass appropriate orders in the interest of justice and equity.***

AFFIDAVIT

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2. It is pertinent to note that the Plaintiff had filed another suit against a third-party trademark infringer (Shrinivas Sugandhalaya (BNG) LLP) pertaining to the same trademark 'TULASI' before the Hon'ble Commercial Court (CCH-88) as Comm.O.S.No.1197/2024. **On 16.10.2024, the Hon'ble Commercial Court observed that the specified value of the Plaintiff's right is below Rs.3,00,000/- (Rupees Three Lakhs Only) and as such, returned the plaint to be presented before the Hon'ble City Civil Court. A copy of the certified copy of the said Order dated 16.10.2024 in Comm.O.S.No.1197/2024 is produced herewith as 14.11.2024, the Plaintiff refiled the returned plaint as O.S.No.804/2024 before the Hon'ble City Civil Court, which is pending adjudication.**

3. Subsequently, on 13.12.2024, based on the above said order the Hon'ble City Civil Court in O.S.No.5928/2015, which is also a suit pertaining to infringing and passing off of the same trademark



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'TULASI', passed an Order finding the market value of the Plaintiff's right is below Rs.3,00,000/- (Rupees Three Lakhs Only). A copy of the certified copy of the Order dated 13.12.2024 in O.S.No.5928/2015 is produced herewith as Document No.2.

4. Therefore, **based on this Hon'ble Commercial Court's order in Comm.O.S.No.1197/2024 determining that the value of the Plaintiff's intangible right is less than Rs.3,00,000/-, the appropriate Court to adjudicate the suit is the Hon'ble City Civil Court, Bengaluru."**

[Emphasis Supplied]

32. Allowing this application, the learned Commercial Court has by the interim order, directed the plaint be returned to be filed before an ordinary Civil Court. The learned Commercial Court relied on the order passed in Comm.O.S.No.1197/2024 by another Commercial Court while determining the value of the trademark of the plaintiff 'TULSI'. It was also held that since the suit is filed for injunction simplicitor, the plaintiff may value his suit as per his own wish. The relevant extract is below:

"In the present case also, the contention of the plaintiff that the valuation of his suit is less than Rs.3 lakhs appears to be reasonable to consider. The learned counsel for plaintiff vehemently argued and contended that the order passed by co-ordinate bench has persuhetion [sic persuasive] value and relied above referred to division bench in support of his arguments. The contention of the plaintiff though the denied by the defendant but he has not denied by the fact of order passed by co-ordinating bench returning the plaint of the plaintiff for want of jurisdiction. On the other hand, the defendant has contended that the plaint averments discloses that plaintiff has declared his turnover more than Rs.6,00,000/-. So also he has stated that he spent huge amount for promotional activities of his products under



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such circumstances contention of the plaintiff that his suit value is less than Rs.3,00,000/- does not holds water. **That has already discussed above the present suit is filed for the relief of bare injunction. So, the plaintiff is entitled to value his suit in accordance to his wish, therefore at this stage the contention of the plaintiff is required to be considered arguments holds good no reason to deny the same.** In my view the plaintiff has proved point No.1, accordingly I have answered it in the 'affirmative'.

11. Point No.2: For the various reasons discussed in point No.1 and findings given on it by me, I proceed to pass the following;

ORDER

I.A. No.7 filed by the plaintiff under Order VII Rule 10 & 10(a) read with Section 151 of CPC is hereby allowed.

The plaint of the plaintiff is ordered to be return to the plaintiff for presenting it before jurisdictional court.

Both parties are directed to be present before jurisdictional court on 22.08.2025 without expecting further notices."

[Emphasis Supplied]

33. No doubt a plaintiff is "dominus litus" and can value his relief at his own discretion. However, in the context of the CC Act, it is imperative for the plaintiff to give some clarity on how the 'specified value' has been fixed in accordance with Section 12(1) of the CC Act. Instead, only a statement has been made that it is more than Rs.3 Lakhs in the application.

(d) **where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value;"**

[Emphasis Supplied]



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34. The Legislature has in its wisdom set out a procedure for determination of the subject value of a commercial dispute. Thus, in order for a dispute to be classified as a commercial dispute, the value of the subject matter of the dispute as is determined in accordance with Section 12 of the CC Act has to be set out in the suit, appeal or application. In addition, and since the subject matter in issue is intellectual property rights, the provisions of Section 12(1)(d) of CC Act would be applicable to determine the specified value.

35. An examination of the Impugned Order reflects that it premises itself on the order passed by another learned Commercial Court in Comm.O.S.No.1197/2024 wherein it is stated that the value of the respondent's intangible right in the trademark "TULASI" has been determined less than Rs.3,00,000/- (Rupees Three Lakhs). Hence, it has been averred that the Civil Court has appropriate jurisdiction to adjudicate the dispute and the application filed by the respondent/plaintiff has been allowed. It has been contended by the learned Senior Counsel for the



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petitioner/defendant that this order has been passed without any determination of the specified value by the learned Commercial Court. In addition, it has been passed relying on the 16.10.2024 order which has wrongly relied on the provision of Section 12(1)(c) where the relief sought relates to immovable property, instead of Section 12(1)(d), to determine the specified value of the subject matter in dispute. Thus, a jurisdictional error has occurred.

36. The learned Senior Counsel appearing for the petitioner/defendant has relied upon the order in the ***Kirloskar AAF*** case, as well as the judgments in ***Bangalore Blues*** case and ***Gangadharappa*** case of this Court, to submit that such these judgments set out that the Commercial Court must examine the specified value and since no evaluation of any kind had been conducted to ascertain the 'specified value', the Impugned Order suffers from an infirmity.

37. An examination of the judgment in the ***Kirloskar AAF*** case, reflects the order has been passed on 25.09.2018 pursuant to a memo filed in relation to whether the matter should be heard by the Appellate Civil Court or by the



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Commercial Appellate Division. While deciding this issue, it was held that since the dispute relates to the infringement of a trademark filed by a Company, the value of the subject matter can "safely" be taken as Rs.3 lakhs. However, in this case, there was no evidence produced to show that the value of the trademark is worth more than Rs.3 lakhs as can be seen from the extract below:

"5. As a counter-argument, Mr. Dhananjay Vidyapati Joshi, the learned counsel for the appellant, **pleads that there is no evidence to show that the value of the subject-matter, except the statement made by the respondent plaintiff that the value of the trademark is worth more than Rs.3,00,000/-.**

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8. The twin requirements of this Act are that a dispute has to be a commercial dispute, and secondly, it must be of certain pecuniary limit, namely Rs.3,00,000/- or above. The term commercial dispute has been defined in Section 2(c) of the Act. Section 2(1)(c)(xvii) clearly deals with the intellectual property rights relating to registered, and unregistered trademarks. **Undoubtedly, the present case deals with a trademark the usage of trademark by the appellant, which according to the respondent plaintiff is an illegal usage. Thus, the subject matter of the dispute does relate to intellectual property rights. Hence, the dispute is a commercial dispute as defined by Section 2(1)(c)(xvii) of the Act.**

9. The Karnataka Court Fees and Suits Valuation Act deals with the calculation of Court Fees. Section 26 of the said Act clearly states that in a suit for injunction, whether the subject-matter of the suit has a market value, or not, the fee shall be computed on the amount at which the relief sought is valued in the plaint, or on rupees one thousand whichever is higher. Therefore, a distinction has to be made between the value of the subject-matter, and the calculation of Court fees. According to Section 26(c), the Court fee shall be based on the relief sought, and the value of the relief mentioned in the plaint. **Admittedly, in the**



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present case, in the plaint, the relief sought was valued as Rs.3,000/-. But nonetheless, the value of the subject-matter, that is the infringement of the trademark, has not been stated. But considering the fact that the dispute relates to the infringement of trademark that too by a company, the value of the subject matter can safely be taken to be more than Rs.3,00,000/-."

[Emphasis Supplied]

37.1 The decision of the Co-ordinate Bench in the **Bangalore Blues** case premises itself on the decision of a Single Judge of the Delhi High Court in **Vishal Pipes** case. The judgment in the **Vishal Pipes** case was however partly overruled by the Division Bench in the Delhi High Court in the **Pankaj Ravjibhai Patel** case.

37.2 In addition, the Co-ordinate Bench in the **Gangadharappa** case was deciding a case where the specified value was not mentioned in the plaint. That stage has however, already passed in the present case. Hence, these judgments may not assist the petitioner/defendant.

38. The Co-ordinate Bench in the **Bangalore Blues Entertainment** case has however held that the determination of the "specified value" of the subject matter of a suit under Section 12 of the CC Act is essential for deciding jurisdiction, and until such determination is made



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in accordance with the statutory framework, the suit cannot be held to be not maintainable on the basis of other considerations. It is apposite to extract the relevant paragraph below:

"31. Until determination of specified value of subject matter of suit as per Section 12 of CC Act, suit cannot be held to be not maintainable by referring to rental value etc. of suit premises, which would not be as per method of assessment provided under Section 12 of CC Act. Therefore, answer to point under consideration would be subject to determination of 'specified value' by Trial Court."

[Emphasis Supplied]

39. A Division Bench of the Delhi High Court in the ***Pankaj Ravjibhai Patel*** case has discussed the issue of 'specified value' and commercial disputes relating to intellectual property matter in great detail. The Division Bench also expressed its reservation with the view taken in the ***Vishal Pipes*** case and ultimately set aside the directions prescribed therein. It was held that it would be incorrect to proceed on the premise that a dispute in a IPR matter would necessarily be more than Rs.3 lakhs. It was further held that where there is an issue on the valuation especially in the case where *mala fide* intent is alleged, the issue has to



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be considered and scrutinized by a Competent Court in the following terms:

"2. We find from the order dated 25 April 2023 passed on this appeal that the Court while entertaining the challenge had placed the impugned order in abeyance and restored the ad interim ex parte injunction which had operated on the suit. **While considering the questions which were canvassed for consideration, the Division Bench also expressed reservation with respect to the correctness of the view expressed by a learned Single Judge of the Court in Vishal Pipes Limited v. Bhavya Pipe Industry.** It accordingly appointed Ms. Swathi Sukumar, learned counsel, as the Amicus Curiae to assist the Court in examining the questions which arose.

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23. Having considered the aforementioned submissions, we at the outset **find merit in the submissions addressed by Ms. Sukumar and learned counsel for the appellant when they contended that Vishal Pipes appears to have confused the aspects of specified value and valuation based on the reliefs claimed. The CCA would inarguably be attracted to any action which relates to a commercial dispute falling within the ambit of section 2(1)(c) and where the specified value of the subject matter goes beyond the minimum Rs. 3 lakhs pecuniary limit as notified. Undisputedly if the declared specified value be Rs. 3 lakhs or above and the suit relate to a commercial dispute, it would necessarily have to be placed before the notified commercial court.**

24. However, in our considered opinion, it would be **wholly incorrect to proceed on the premise that the dispute forming the subject matter of IPR suits would necessarily and invariably be liable to be valued at Rs. 3 lakhs or above. While we do not intend to convey a position of a deliberate undervaluation being accorded a judicial imprimatur, we are of the firm opinion that it would be wholly incorrect for courts to proceed on the presumption that an IPR suit when valued at below Rs. 3 lakhs is necessarily based on ulterior motives or a mala fide intent to avoid application of the CCA. We note that the issue of whether a particular suit has been deliberately undervalued is one which can**



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always be examined and scrutinized by a competent court. Ultimately the issue of a deliberate suppression of valuation would have to be considered and answered based on the facts so obtaining in an individual case. All that we deem apposite to note and observe in this respect is that Vishal Pipes clearly appears to have been incorrectly decided when it formulated a direction mandating that normally in all IPR cases, the valuation ought to be Rs. 3 lakhs and above.

25. We also find merit in the submission of Ms. Sukumar who alluded to the disruptive outcome of the directions contained in Para 66 (iv) and (v) of Vishal Pipes. **As would be evident from a reading of the various provisions of the CCA, a suit is liable to be placed before the notified commercial court only if it relates to a commercial dispute and crosses the threshold of Rs. 3 lakhs as the specified value when determined in accordance with Section 12. Undisputedly, unless the twin factors of "commercial dispute" and "specified value" are met, a matter cannot be placed before or be taken cognizance of by a commercial court.** It is in the aforesaid backdrop that we find ourselves unable to appreciate or sustain the directions contained in sub-paragraphs (iv) and (v) of Para 66 of Vishal Pipes."

[Emphasis Supplied]

39.1 It was further held that it is only once a competent Court comes to the conclusion that in the facts of a particular case, the valuation is incorrect or actuated by *mala fides*, it could direct that the plaint be appropriately amended. It has also held that an examination of the issue of 'under valuation' can be undertaken by the Court hearing the matter and there was no requirement for the



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Commercial Court only to decide this. The relevant extract is below:

"29. Insofar as para 66 (ii) and (iii) are concerned we find merit in the submission of Ms. Sukumar that all IPR suits in which a valuation has been pegged at below Rs. 3 lakhs may be duly examined by the court before which those matters are presently laid. We find no justification for the withdrawal of those matters from the competent courts and their placement before a commercial court for the purposes of ascertaining the correctness of the valuation as declared. That exercise can very well be undertaken by the competent court itself. If the competent court, in the facts of a particular case, ultimately comes to conclude that the valuation of an IPR suit has been deliberately suppressed, it could always frame appropriate directions for the plaint being amended and additional court fee being demanded. However, those directions would be warranted only when the concerned court comes to a definitive conclusion in the facts of a particular case that the declared valuation is patently incorrect or is actuated by ulterior motives.

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32. Our inability to subscribe or accede to the directions framed in Vishal Pipes is further fortified when those directives are tested in the backdrop of a quia timet action. It would clearly be impossible to accord an imprimatur to those directions in situations where loss cannot be quantified or where the infringement is apprehended. Learned counsel for the appellant thus clearly appears to be correct when he contended that the directions framed by the Court in Vishal Pipes would be rendered unworkable in such contingencies.

33. We thus come to conclude that while it would be open for the competent court to examine the declared specified value and the value ascribed to the reliefs claimed in an IPR suit if it be pegged at below Rs. 3 lakhs, the issue of undervaluation would have to be evaluated based on the facts of each case. The aforesaid exercise can be legally undertaken by the competent court itself and such matters need not be transferred to commercial courts for the aforesaid purpose.



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34. The Court further finds merit in the suggestion mooted by Ms. Sukumar of an additional declaration being made by plaintiffs in IPR suits where valuation is placed at below Rs. 3 lakhs. We thus direct that in all such cases, the plaintiff would have to declare that it has not taken an inconsistent position with respect to specified value in any other litigation pending or instituted in the past.”

[Emphasis Supplied]

VIII. Conclusion :

40. The record reflects, that the respondent/plaintiff has asserted contradictory valuation for its intangible rights. However, no material in this behalf was placed before the learned Commercial Court. Thus, the learned Commercial Court has not undertaken any kind of examination of the specified value.

40.1 Given the fact that the petitioner/defendant has undertaken a specific plea of *malafides* on the part of the respondent/plaintiff, the learned Commercial Court ought to have undertaken an examination of this aspect.

41. It was also to be considered as to whether the filing *qua* the matter captioned ***M/s. Sarathi International Inc. vs. M/s. Shrinivas Sugandhalaya (BNG) LLP*** in Comm.O.S.No.1197/2024 in relation to specified value could have been adopted. However, and in any event, as is



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set out in paragraph 35 above, the learned Commercial Court in that matter has relied on Section 12(1)(c) and not Section 12(1)(d) of the CC Act.

42. In view of the foregoing discussions, the petition is **allowed**. The Impugned Order is set aside, with directions to the learned Commercial Court to undertake an examination on the 'specified value' as has been claimed by the respondent/plaintiff and pass an order in accordance with the law. The rights and contentions of both parties are kept open in this regard.

43. Given that this matter has been pending for some time, the learned Commercial Court is requested to conduct the enquiry/examination as early as is possible.

44. In view of what has been stated by this Court hereinabove, including in paragraphs 21 and 22, the Registry is directed to place this matter before the Hon'ble the Chief Justice for appropriate directions, if deemed requisite.



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45. This Court expresses its appreciation for the assistance provided by the learned Amicus Curiae, Ms. Nayana Tara B.G., in this matter.

***Sd/-**
(TARA VITASTA GANJU)
JUDGE

JJ/YN

*Vide chamber Order dated: 09.06.2026 Page No.75 is replaced