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

Reserved on: 22.08.2023

Pronounced on: 25.08.2023

+ CM(M) 1356/2023 & CM APPL. 43168/2023 CM APPL. 43169/2023
CM APPL. 43170/2023

TIMES NOW NAVBHARAT

..... Petitioner

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Sandeep Sethi, Sr. Advocate
Mr. Kunal Tandon, and Ms. Niti Jain
and Ms. Varnalee Mishra, Advocates

versus

NARESH BALIYAN

..... Respondent

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. B.S. Jakhar, Mr. Vikram Singh
Jakhar, Mr. Sandeep Sharma,
Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J :

1. This petition filed under Article 227 of the Constitution impugns the ad-interim orders dated 17.08.2023 and 18.08.2023 passed by Senior Civil Judge, South West, Dwarka Courts ('Trial Court'), New Delhi in Civil Suit bearing no. 1033/2023 in an application filed by the Respondent under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('CPC').



Brief facts

2. The Petitioner herein is the original defendant and the Respondent is original plaintiff in the civil suit.

3. The civil suit has been filed on 17.08.2023 for mandatory and permanent injunction restraining the Petitioner herein from telecasting or broadcasting or printing news spread/shared by Kapil Sangwan also known as Nandu of 'Nandu Gang'. The cause of action pleaded in the suit is with respect to an episode broadcasted by the Petitioner in the afternoon on 17.08.2023, which as per the Respondent is false news.

3.1. The learned Trial Court *vide* order dated 17.08.2023 at 05:18 PM issued summons in the suit to the Petitioner herein and passed an *ex-parte* ad-interim order restraining the Petitioner herein from broadcasting news under the head 'Operation Paap' and posted the matter for hearing on 18.08.2023.

3.2. The learned Trial Court on 18.08.2023 extended the interim order until 23.08.2023 and granted time to the Petitioner, as per its request, to file a reply in the proceedings. The said order records that the next date of 23.08.2023 has been fixed as per the convenience of the Petitioner.

4. The facts which have led to the controversy in the present petition are that on 17.08.2023 a broadcast was telecasted by the Petitioner titled as 'Sarji ka Vidhayak Gangster ka Sahayak' and 'Operation Paap' on its channel 'Times Now Navbharat' and on its social media handle on 'YouTube', wherein the Petitioner sought to highlight a link/nexus between the Respondent herein and one (person) named Kapil Sangwan also known as Nandu.

4.1. The Petitioner's anchor relied upon and played an audio recording of a conversation between Kapil Sangwan and the Respondent herein during this episode. In the episode aired on 17.08.2023, the Petitioner invited five (5)



panellists to debate on the conversation heard in this audio recording.

5. The Respondent herein aggrieved by the said episode instituted the civil suit bearing no. 1033/2023 for permanent and mandatory injunction before the Trial Court. It is stated in the suit that the contents of the episode are false and no prior verification has been sought by the Petitioner from the Respondent herein before holding the debate and airing the episode. It is stated in the suit that the attempts made by the Respondent to reach out to the Petitioner and its officials to convey that the news being carried in the episode is false has not met with any response and therefore, the Respondent has been constrained to file the civil suit seeking an injunction against the Petitioner herein.

Arguments of the Petitioner

6. Mr. Maninder Singh, learned senior Advocate appearing for the Petitioner has made the following submissions: -

6.1. He states that at the outset, the Petitioner submits that the contents of the audio recording between the Respondent and Kapil Sangwan, which were played out at the episode aired on 17.08.2023 are true and correct. He states that the Petitioner stands by the veracity of the said recording. He states that the debate, which was moderated in the said episode was pertaining to correct facts.

6.2. He states that, therefore, the episode which was broadcasted by the Petitioner on 17.08.2023 is absolutely fair, honest and it has been aired in public interest. He more specifically relies upon the statement to this effect made in this petition at paragraphs 9(iii) and (iv).

6.3. He states that the Petitioner herein stand by the contents of the episode and the truthfulness of the recording played out at the episode. He states that the Petitioner is willing to take upon itself the onus of proving at trial that the



audio recording played out in the episode was truthful. He states that in view of this stand taken by the Petitioner herein, no injunction can be granted by a Civil Court to restrain the Petitioner from broadcasting the news/episode and the remedy, if any, of the Respondent lies only in seeking damages. In this regard, he relies upon the judgement of this Court in ***Sardar Charanjit Singh v. Arun Purie and ors.; 1983 (4) DRJ 86*** and more specifically paragraph '23' therein, which reads as under:-

“23. Learned counsel for the defendants submits that they intend to defend the article to be published by them on the grounds of justification, fair comment and qualified privilege and as such no temporary injunction should be issued. In Gatley on Libel and Slander 8th edition para 1574 page 641 it has been observed, “when once a defendant says that he is going to justify, the words complained of, there is an end of the case so far as an interim injunction is concerned”. In Halsbury's Laws of England, 4th edition vol. 28 para 163 page 87 it is observed, “it is well settled that no injunction will be granted if the defendant states his intention of pleading a recognised defence, unless the plaintiff can satisfy the court that the defence will fail. This principle applies not only to the defence of justification but also the defences of privilege, fair comment, consent and probably any other defense”. In Fraser v. Evans and others, 1909(1) All England Law Reports 8 the newspaper admitted that the article to be published would be defamatory to the plaintiff but said that, if they were sued, they would plead justification and fair comment. The injunction was discharged on appeal and it was observed that the court would not restrain the publication of an article even though it was defamatory, when the defendants said that they intended to plead justification or fair comment. Observations to the same effect were also made in Woodward and others v. Rutchins and others, 1977(1) Weekly Law Reports, 760.”

(Emphasis supplied)

6.4. He states that the impugned orders dated 17.08.2023 and 18.08.2023 grant an unqualified and absolute injunction against the airing of the news pertaining to the Respondent and therefore, the said order qualifies as a gag order, which is impermissible in law. He states that the grant of such a gag order is in violation of Article 19 (1) (a) of the Constitution and therefore, the Fundamental Rights of the Petitioner to broadcast news have been violated. He relies on the judgment of this Court in ***Tata Sons Vs. Greenpeace***



International and Ors, 2011 SCC Online Del 466 and *Dr. Shashi Tharoor v. Arnab Goswami & Anr., 2017 SCC Online Del 12049* in support of this contention.

6.5. He states that the balance of convenience is against the grant of such an injunction and in fact, the impugned orders fail to give any reasons for issuing the blanket injunction. He relies upon the judgement of the Division Bench of this Court in *Khushwant Singh and Anr. v. Maneka Gandhi; AIR 2002 Delhi 58*

6.6. He states that since the order of the learned Trial Court is without jurisdiction and therefore, the Petitioner is entitled to challenge the impugned orders by filing the present petition under Article 227 of the Constitution without awaiting adjudication of the application filed by the Respondent under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') or availing the statutory remedy of appeal under Order XLIII Rule 1 of the CPC and to this effect, relies upon the judgement of the Supreme Court in '*Dahya Lala and Ors. v. Rasul Mahomed Abdul Rahim and Ors.*; 1963 (3) SCR 1.

6.7. He referred to the undated criminal complaint filed by the Respondent herein, addressed to the Special Commissioner of Police, Special Cell, Police Headquarters, New Delhi, which has been filed with the plaint. He states that the said complaint fails to inspire any confidence as regards its existence prior to filing of the civil suit before the Trial Court. He also referred to the notice received by the Petitioner under Section 91 of the Code of Criminal Procedure, 1973, ('Cr.P.C') in FIR No. 166/2023 on 18.08.2023 asking the Petitioner to deposit the original clip of the "Operation Paap" telecasted during the episode aired on 17.08.2023. He states that the original recording of the episode has been handed over to the police in compliance of the said



notice. He also referred to FIR bearing No. 0880 dated 22.12.2022 and relied upon the contents therein to state that allegations of extortion have been made by the complainant therein. He submitted that the aforesaid facts lend credence to the episode aired by the Petitioner herein.

7. Mr. Sandeep Sethi, learned Senior Advocate also appearing for the Petitioner submitted that the present petition filed under Article 227 of the Constitution is maintainable against the impugned order as the Fundamental Rights of the Petitioner have been violated and, in this regard, he places reliance upon the judgement of the Supreme Court in *Whirlpool Corporation v. Registrar of Trademarks, Mumbai and Ors.; 1998 (8) SCC 1*.

7.1. He states that the learned Trial Court could not have granted an *ex-parte* ad-interim injunction without giving a prior hearing to the Petitioner herein.

7.2. He states that the Petitioner herein is a reputed media house with an established standing and therefore, the learned Trial Court should have called upon the Petitioner and sought its explanation before granting the *ex-parte* ad-interim order on 17.08.2023. He states that since the Petitioner stands by the truthfulness of the audio recording played in the episode, no injunction could have been granted by the learned Trial Court.

Arguments of the Respondent

8. In reply, Mr. Mohit Mathur, learned Senior Advocate appearing for the Respondent has submitted as under:

8.1. He states that the learned Trial Court granted an ad-interim injunction and issued summons on 17.08.2023, at about 05:18 PM and fixed the matter immediately for hearing on the next date i.e., 18.08.2023.

8.2. He states on 18.08.2023, the matter was adjourned to 23.08.2023 as per the request of the Petitioner and the date was fixed as per their convenience. He states that the order dated 18.08.2023 records the undertaking of the



Petitioner that it will not broadcast the episode until further orders. He states that the contents of this petition at paragraph 7.7 challenging the contents of the order dated 18.08.2023 are untenable. He states that the Petitioner having not approached the learned Trial Court for correcting the order cannot be permitted to raise contentions which are contrary to the record of the said Court. He states that, therefore, the matter on 18.08.2023 was adjourned at the request of the Petitioner.

8.3. He states that the matter is listed before the learned Trial Court on 23.08.2023 and the arguments raised by the Petitioner herein ought to have been raised before the learned Trial Court by filing an appropriate reply to the application under Order XXXIX Rule 1 and 2 CPC. He states that despite having sought time from the learned Trial Court on 18.08.2023 to file a reply, no such reply has been filed till date. He states instead the Petitioner has elected to file the present petition on 20.08.2023. He states that without permitting the learned Trial Court to consider the stand/defence of the Petitioner, the said Petitioner has filed the present petition, which is not maintainable in law.

8.4. He states that the impugned order dated 17.08.2023 records the contentions of the Respondent, wherein the stand of the Respondent that the audio recording played out in the episode is false has been duly recorded. He states that the submissions of the counsel which were recorded in the order form the basis of the ad-interim injunction granted by the learned Trial Court. He states that the said Court posted the matter on next date i.e., 18.08.2023 without any delay.

8.5. He states that the learned Trial Court is well within its jurisdiction to grant an ad-interim injunction restraining a broadcast or a telecast by a news channel and therefore, the contention of the Petitioner that the impugned order



is without jurisdiction is incorrect. He relies upon the injunctions granted by the civil court in similar matters in *Vinai Kumar Saxena v. Aam Aadmi Party and Ors.*; 2022 SCC Online Del 3093, *Hanuman Beniwal and Ors. v. Vinai Mishra and Ors.* (2022) SCC OnLine Del 4882 dated 13.06.2022 and *Patanjali Ayurved Ltd. and Anr. v. Sobhagya Media Pvt. Ltd. (APN Live) and Ors.* dated 01.06.2020 in CS (OS) No. 135/2020. He also relies upon the judgment of this Court in *Dr. Shashi Tharoor v. Arnab Goswami & Anr.* (supra).

8.6. He states that even on the plea that the impugned order dated 17.08.2023 is unreasoned, the remedy of the Petitioner lies in approaching the Appellate Court under the CPC. He states that since the grant of the impugned orders fall within the jurisdiction of the learned Trial Court, no petition under Article 227 of the Constitution is maintainable and error, if any, has to be corrected as per remedies provided in CPC. He relies upon the judgment of the Supreme Court in *Mohd. Yunus v. Mohd. Mustaqim and Ors.*, (1983) 4 SCC 566.

8.7. He states that the Petitioner herein has referred to notice received by it under Section 91 of the Cr.P.C; however, the said notice has been received in FIR No. 166/2023 which has no concern with the Respondent herein. He states that the Respondent herein has no concern with the FIR bearing No. 0880 dated 22.12.2022, relied upon by the Petitioner and the contents thereof contain no allegation against the Respondent herein.

8.8. He states that the Respondent herein himself has filed complaints against Kapil Sangwan on 19.12.2022, 20.12.2022, 03.07.2023 and 05.07.2023. He states that the Respondent's undated complaint against Kapil Sangwan filed with the civil suit was duly received by the ACP, SWR, Special Cell, Delhi on 05.07.2023.



8.9. He states that the defense of the Petitioner and the claims of the Respondent should be first adjudicated by the learned Trial Court and thereafter, by the Appellate Court as per the hierarchy of the Courts under the CPC. He therefore, states that the present petition is not maintainable.

Rejoinder arguments by the Petitioner

9. In rejoinder, Mr. Maninder Singh, learned senior counsel for the Petitioner states that there is no dispute that the learned Trial Court has the jurisdiction to grant an injunction. He states, however, the impugned order is a gag order and does not balance the rights of the parties. He states that in appropriate facts, the Civil Court can grant an injunction, if it is satisfied that the defense of the defendant shall fail at the trial. He states that however, in the facts of this case, since the Petitioner herein has taken a stand that audio recording played during the episode is truthful, therefore, no injunction can follow.

9.1. He reiterated that since the impugned order is a gag order, it violates the fundamental right of the Petitioner under Article 19 (1) (a) of the Constitution and therefore, in view of the judgment of ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai*** (supra), the present petition is maintainable.

9.2. He states that the learned Trial Court appears to have wrongly understood the submissions of the counsel for the Petitioner on 18.08.2023 and erred in recording that an undertaking was given by the counsel for the Petitioner.

Findings of this Court

10. This Court has considered the submissions of the learned senior counsel appearing for the parties and perused the record.

11. It is not disputed that the Petitioner has available to it statutory remedies



under CPC for seeking vacation of the ad-interim orders dated 17.08.2023 and 18.08.2023. The Petitioner can either seek the vacation of the said ad-interim orders before the learned Trial Court by opposing the pending application under Order XXXIX Rule 1 and 2 of the CPC or in the alternative, the Petitioner can file an appeal under Order XLIII Rule 1 (r) CPC before the Appellate Court.

11.1. The Petitioner has contended that it has elected to and is entitled to maintain the present petition under Article 227 of the Constitution; and existence of the alternate statutory remedy is not a bar to maintaining this petition in view of the defence raised by the Petitioner before this Court.

12. This Court is, however, not persuaded by the said argument of the Petitioner and in the opinion of this Court, no circumstances exist for justifying the invocation of Article 227 of the Constitution and not availing the statutory remedies available to the Petitioner under CPC.

12.1. The Petitioner in the rejoinder arguments has admitted that the learned Trial Court has the requisite jurisdiction to entertain the suit and grant the relief of injunction sought by the Respondent. However, it is the contention of the Petitioner that the Respondent is not entitled to the relief of injunction in the facts of this case because the Petitioner is raising the 'defence of truth' and it is willing to prove the same at the trial.

12.2. It is a matter of record that this 'defence of truth' raised by the Petitioner before this Court, which is a defence on merits has not been placed before the learned Trial Court on 18.08.2023 and therefore, there was no occasion before the said Court to consider the said defence of the Petitioner and adjudicate the relief sought by the Respondent.

12.3. In the facts of this case, the Petitioner entered appearance before the learned Trial Court on 18.08.2023, sought time to file its reply to the



application filed by the Respondent under Order XXXIX Rule 1 and 2 CPC; however, it has admittedly not filed any reply apprising the said Court with respect to its 'defence of truth'.

12.4. This Court has no reason to conclude that the 'defence of truth' as contended by the Petitioner along with the effect thereof on the maintainability of prayer for injunction, when placed before the learned Trial Court will not be appreciated or adjudicated by the said Court. This is not even the argument of the Petitioner. The judgements relied upon by the Petitioner in support of its contention that if the 'defence of truth' is raised by a defendant, then no injunction shall follow are all judgements rendered by the Civil Court in exercise of its original jurisdiction under Section 9 of the CPC. In the facts of this case as well, the learned Trial Court is exercising its jurisdiction under Section 9 of the CPC and therefore the impugned order falls within its jurisdiction.

12.5. It is trite law that this Court in exercise of its supervisory power under Article 227 of the Constitution, cannot sit in appeal over the decision of the Court below. In fact, any exercise of appellate power would be beyond the supervisory jurisdiction of this Court.

13. There has admittedly been no violation of principles of natural justice in as much as the learned Trial Court after granting the ad-interim injunction on 17.08.2023 fixed the matter (at the shortest possible returnable date) on 18.08.2023. The proceedings before the learned Trial Court as recorded on 18.08.2023 are also significant and therefore reproduced as under:-

"It is submitted by ld counsel for defendant that the defendant has complied with the orders passed by this court as and when they received the copy of the order dated 17.08.2023 and undertake not to broadcast the same till further orders.

Ld counsel for the defendant seek very short adjournment for filing the reply.



At request and convenience of Ld counsel for defendant, matter is adjourned for 23.08.2023 at 12.00 noon.

Interim order to continue till next date of hearing in view of statement given by Ld counsel for defendant.

At this stage, ld counsel for the plaintiff moved an application u/o 6 Rule 27 CPC. Now Ld counsel for plaintiff wish to withdraw the above application with the submission that instead of the present application u/o 6 Rule 27 CPC the plaintiff

would like to prefer the application u/o I Rule 10 CPC. In view of submissions made by ld counsel for plaintiff, the application u/o 6 Rule 27 CPC is dismissed as withdrawn. However, the pendrive and said transcript alongwith other documents is taken on record at the request of Ld counsel for plaintiff. Copy supplied to ld counsel for defendant.

(At 1.10 pm)

At this stage, Sh R.S. Brara, Ld counsel for defendant has filed memo of appearance. Taken on record.”

(Emphasis supplied)

13.1. The Petitioner herein was well within its right to raise its ‘defence of truth’ before the learned Trial Court at the hearing dated 18.08.2023, to oppose the grant of ad-interim injunction dated 17.08.2023, oppose its continuation and raise the arguments sought to be raised in this petition. However, the Petitioner sought an adjournment for filing its reply and as recorded in the said order the next date of hearing i.e., 23.08.2023 was fixed as per the convenience of the Petitioner.

13.2. The Petitioner, however, thereafter has elected neither to file a reply before the learned Trial Court nor contest the matter before the said Court on 18.08.2023 or 23.08.2023. In these facts, this Court is of the opinion that there has been no procedural impropriety committed by the learned Trial Court on either 17.08.2023 or 18.08.2023, which would merit entertaining this petition.

13.3. This Court also finds merit in the submission of the Respondent that the Petitioner cannot controvert the statement of fact recorded by the learned Trial Court in the impugned order dated 18.08.2023 to the effect that the counsel for the Petitioner consented to the extension of the injunction until



23.08.2023. The order of the Court is conclusive of the facts recorded therein and it cannot be denied by making a statement made in this petition. In case the Petitioner believed that its counsel's statement has been incorrectly recorded it should have approached the learned Trial Court for having the same corrected. This position of law is well settled in this regard and reference can be made to the judgments of the Supreme Court in *State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. (1982) 2 SCC 463* and *Food Corp. of India and Ors. v. Bhanu Lodh and Ors (2005) 3 SCC 618*. Therefore, the contention of the Petitioner that its counsel's undertaking was wrongly recorded on 18.08.2023, cannot be accepted by this Court.

14. The contention of the Petitioner that its fundamental right under Article 19 (1) (a) of the Constitution has been violated due to the impugned orders, is again based on its arguments of 'defence of truth'. Similarly, the contention that the injunction is absolute and thus, impressible can be raised before the learned Trial Court. The consideration of the said contention of the Petitioner falls within the jurisdiction of the Trial Court or the Appellate Court. The learned Trial Court in the exercise of its jurisdiction under Section 9 of CPC is competent to decide the said defence raised by the Petitioner and vacate/modify the injunction appropriately. However, the said plea would not entitle the Petitioner to file the present petition instead of approaching the Trial Court or the Appellate Court.

15. The plea of the Petitioner that the impugned order dated 17.08.2023 fails to give any reasons for grant of the ad-interim injunction, is again a challenge to the merits of the order. The ground that the said order is unreasoned can be raised in the appeal.

16. This Court is of the opinion that the Petitioner has available to it two statutory remedies available under the CPC and therefore, the present petition



filed under Article 227 of the Constitution is not maintainable. First, is that the Petitioner can approach the Trial Court for vacating of the interim *ex-parte* orders passed on 17.08.2023 and 18.08.2023. Second, is that an appeal could have been preferred by the Petitioner against the said orders.

16.1. Section 104 of CPC says that:

“104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:

* * *

(i) any order made under rules from which an appeal is expressly allowed by rules:”

16.2. Order 43 Rule 1 CPC says that:

“1. An appeal shall lie from the following orders under the provisions of Section 104, namely-

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(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;”

16.3. Order 39 Rule 1 CPC says thus:

“1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.”

17. The Supreme Court in **A. Venkatasubbiah Naidu v. S. Chellappan (2000) 7 SCC 695** in similar circumstances expressly held that a petition under Article 227 of the Constitution is not maintainable when the party had available to it two alternative remedies under the CPC. In this regard, it would



be relevant to refer to paragraphs 9, 13, 21, 22 and 23, which read as under:

“9. *Shri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to the respondent to opt either of the two remedies, contended the Senior Counsel.*

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13. *It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief.*

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21. *It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.*

22. *Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when*



the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned Single Judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

23. *In the light of the direction issued by the High Court that the trial court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that till such orders are passed by the trial court, status quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties.”*

(Emphasis supplied)

17.1. The Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai And Ors. v. Tuticorin Educational Society And Ors. (2019) 9 SCC 538*** as well, categorically held that no petition under Article 227 of the Constitution should be entertained where specific remedy of appeal is provided under the CPC itself. The relevant portion of the judgment read as under:

“1. **V. Ramasubramanian, J.**— *Leave granted. Aggrieved by an order [Tuticorin Educational Society v. Virudhunagar Hindu Nadargal, CRP (MD) No. 1084 of 2018, order dated 21-8-2018 (Mad)] of the High Court passed under Article 227 of the Constitution, vacating an interim order of injunction granted by the trial court, the plaintiffs have come up with this appeal.*

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11. *Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695] , this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court*



should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675], pointed out in *Radhey Shyam v. Chhabi Nath* [*Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

(Emphasis supplied)

17.2. The Supreme Court in *Mohd. Yunus v. Mohd. Mustaqim and Ors.*, (1983) 4 SCC 566 as well, held that High Court cannot act as an Appellate Court in a petition filed under Article 227 of the Constitution. In the facts of this case, the Petitioner is in effect seeking exercise of Appellate Powers by this Court. The relevant paragraph of the judgment read as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in



consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

(Emphasis supplied)

18. In the facts of the present case as noted above, this Court is of the opinion that the learned Trial Court has neither committed any procedural impropriety nor violated principles of natural justice in passing the impugned orders. The learned Trial Court and the Appellate Court are competent to deal with the challenge to the impugned orders on its merits and adjudicate upon the ‘defence of truth’ raised by the Petitioner herein.

19. The reliance placed by the Petitioner on the judgment of *Dahya Lala and Ors (supra)* is not attracted in the facts of this case. In the case before the Supreme Court, it was held that the acts of the Revenue Authorities which were challenged were without any jurisdiction and therefore a petition under Article 227 of the Constitution was held to be maintainable. However, in the present case as recorded above, it is admitted by the Petitioner that the learned Trial Court has jurisdiction to adjudicate the reliefs sought in the suit.

19.1. The reliance placed by the Petitioner on the judgment of *Whirlpool Corporation (supra)* is not attracted in the facts of this case. In the said judgment, a writ petition under Article 226 of the Constitution was filed against the show cause notice dated 29.07.1997 issued by the Registrar under Section 56 (4) of the Trade and Merchandise Marks Act, 1958. It was the contention of the petitioner therein that the Registrar had no jurisdiction to issue the said show cause notice and, therefore, it was an act wholly without jurisdiction. The said contention of the Petitioner was upheld and the show cause notice was quashed.



However, in the facts of this case there is no dispute that the learned Trial Court has jurisdiction to entertain the civil suit and adjudicate the reliefs sought in the plaint and therefore the impugned orders are not without jurisdiction.

19.2. The Supreme Court in the judgment of *Radhey Shyam and Anr. v. Chhabi Nath And Ors. (2015) 5 SCC 423* has authoritatively held that jurisdiction of the High Court under Article 227 is distinct from jurisdiction under Article 226 and judicial orders of the Civil Court are not amenable to a writ of certiorari under Article 226 of the Constitution. Therefore, no reliance can be placed on the judgment of *Whirlpool Corporation (supra)* for maintaining this petition under Article 227 of the Constitution.

20. Therefore, in light of the statutory provisions of CPC and remedies available to the Petitioner thereunder, this Court is not inclined to entertain this petition challenging the impugned orders on merits. It is however, directed that if the Petitioner approaches the learned Trial Court on or before 28.08.2023 by filing its reply then the said Court shall adjudicate and pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, preferably within one (1) week of filing of the reply. It is further directed that no adjournment will be sought by either party and parties will cooperate with the learned Trial Court in adjudicating and disposing of the said application.

21. With the aforesaid directions the present petition is disposed of. The pending applications also stand disposed of.

22. It is made clear that this Court has not examined the merits of the contentions raised by the parties. The rights and contentions of the parties are left open to be decided by the competent Court.

23. The digitally signed copy of this order, duly uploaded on the official



website or the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

August 25, 2023/hp/ms/sk

[Click here to check corrigendum, if any](#)

