*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

***THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

+ CIVIL REVISION PETITION NOs.1933 & 1934 of 2024

% 26.09.2024

M/s. Navayuga Engineering Company Ltd.,

……Petitioner

And:

$1. M/s. Structicon India Pvt.Ltd., (SIPL)
and another

….Respondents.

!Counsel for the petitioners : Sri M. Rahul Chowdary,
rep. Sri Ginjupalli Subba Rao

^Counsel for the respondent : Sri Rosedar S.R.A.

<Gist:

>Head Note:

? Cases referred:

(2005) 12 SCC 734
(2009) 5 SCC 162
2001 (2) A.P.L.J. 132 (HC)
2018 SCC OnLine Hyd 683
(2020) 15 SCC 706
AIR 2003 SCC 3044
CRP.No.199 of 2022 APHC decided on 27.06.2023
CRP.No.900 of 2024 APHC decided on 11.09.2024
(1977) 4 SCC 551
(2018) 14 SCC 715
(2004) 5 SCC 729
(2001) 7 SCC 401
(1981) 4 SCC 8
1963 SCC OnLine SC 43
(2010) 8 SCC 329
(2022) 4 SCC 181
2022 SCC OnLine SC 1775
CRP.No.6475 of 2018, TGHC, decided on 10.04.2019
(2021) 15 SCC 817
1955 SCC OnLine SC 21
(2022) 5 SCC 484
AIR 2003 SCC 3044

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION NOs.1933 & 1934 of 2024

DATE OF JUDGMENT PRONOUNCED: **26.09.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

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RAVI NATH TILHARI, J

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NYAPATHY VIJAY,J

HONOURABLE SRI JUSTICE RAVI NATH TILHARI

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION NOs.1933 & 1934 of 2024

COMMON ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri M.Rahul Chowdary, learned counsel representing Sri Ginjupalli Subba Rao, learned counsel for the petitioner and Sri Rosedar S.R.A., learned counsel for the respondent No.1 in both the Civil Revision Petitions (CRPs).

2. The petitioner is defendant No.1 in Company Suit (in short 'COS') No.5 of 2023 on the file of the Special Court for Trial and Disposal of Commercial Disputes, Vijayawada (in short 'Special Court'). The COS was filed by the plaintiff/respondent No.1 herein. Respondent No.2 – Union Bank of India is defendant No.2 in COS.

3. Learned counsel for the respondent No.1 has placed before us a copy of the docket orders in COS, serving copy thereof to the learned counsel for the petitioner. There is no dispute on such dates as mentioned therein.

4. With the consent of the learned counsels for the parties, the CRPs are being decided finally at this stage.

Facts:

5. In COS, on 01.05.2023, defendant Nos.1 & 2 were absent. There was no representation. Summons of D1 & D2 were not returned.

Plaintiff was also absent. The matter was fixed for 10.05.2023, awaiting service of summons. As per order dated 10.05.2023, summons were not served on D1 & D2. The order was passed for issuing fresh summons fixing 22.06.2023.

6. The petitioner's case is that the summons were served on 06.05.2023 after the date fixed i.e., 01.05.2023. Consequently he could not appear and the next date could not be known. He engaged the counsel sometimes in July 2023 and then he came to know that on 22.06.2023 an order to proceed exparte was passed against the petitioner/defendant No.1 after holding that there was proper service of notice to him. The order to proceed Ex-parte against defendant No.2 was also passed on 25.09.2023. The evidence of PW.1 was taken on record on 03.10.2023 and Ex.A1 to A38 were marked. The defendants remained absent. So cross-examination was treated as 'nil'. The plaintiff's counsel reported no further evidence. The evidence was closed and the matter was fixed for arguments on 06.10.2023. On 06.10.2023, the plaintiff's counsel was heard. Counsel for D1 filed vakalat but there was no representation for the defendant No.1 at the time of arguments. The matter was posted for judgment, fixing 16.10.2023.

7. On 16.10.2023, the Presiding Officer was on official duty (O.D), the matter was posted to 30.10.2023. The petitioner filed two IAs i.e.,

I.A.No.170 of 2023 to reopen COS.No.5 of 2023 under Section 151 of Code of Civil Procedure (CPC) and I.A.No.171 of 2023 to set aside the ex-parte order dated 22.06.2023, under Order 9 Rule 7 CPC.

8. During the pendency of the applications, I.A.Nos.170 & 171 of 2023, the Presiding Officer was transferred. New Presiding Officer joined. The judgment was not pronounced by the previous Presiding Officer. On 09.08.2024 both the applications were dismissed by common order and the COS was posted for hearing of the plaintiffs, fixing 16.08.2024. On that date, at request of the plaintiff side, the matter was posted for 20.08.2024 for exparte evidence. On 20.08.2024, the plaintiff represented that he was ready for evidence. However, the docket order dated 30.08.2024 showed that the plaintiff's evidence had already been recorded as PW1 on 3.10.2023 and Ex.A1 to Ex.A38 were already marked. The plaintiff reported no further evidence. The Court posted for arguments on plaintiff side fixing 09.09.2024.

9. The docket order dated 30.08.2024 is as under:

> "*Plaintiff present. Both sides represented before this Court. The record shows that the evidence of plaintiff was already recorded as PW.1 on 03.10.2023 and Exs.A1 to A38 were marked. The plaintiff reported no further evidence.*
>
> *The learned counsel for the defendant filed a memo along with case status of Hon'ble A.P High Court stating that they preferred revision against the orders in IAs. 170 and 171 of 2023 and also mentioned that CRP Nos.1933 and 1934 of 2024 were given and they are yet to be listed and sought for adjournment.*
>
> *The learned counsel for plaintiff has taken objection for granting adjournment in view of the rival contentions of both sides.*

Since the CRP number was already given on the file of Hon'ble A.P.High Court, this Court has decided to give some reasonable time and in the meantime, the plaintiff is directed to proceed with arguments.

Hence, posted for arguments on plaintiff side, call on 09.09.2024."

10. It is thus evident from the dates mentioned above that, the COS is pending at the stage of hearing for arguments of the plaintiff side.

11. Challenging the impugned common order dated 09.08.2024 in I.A.No.170 of 2023, CRP.No.1933 of 2024 has been filed and against the same order in I.A.No.171 of 2023, CRP.No.1934 of 2024 has been filed by the petitioner/defendant No.1.

Submissions of the learned counsels:

12. Learned counsel for respondent No.1 raised objection that the impugned order is interlocutory order. CRP under Section 115 is barred by Section 8 of the Commercial Courts Act, 2015 (in short Act, 2015). The petitioner has the remedy to file appeal under Section 13 of the Act, 2015, if the ultimate decree goes against him, while challenging the ultimate decree in appeal.

13. Learned counsel for the petitioner submitted that the impugned order is not interlocutory but it is a final order. The revision is not barred under Section 8 of the Act, 2015. He further submitted that the petitioner has filed memo seeking permission to convert the CRP from under Section 115 CPC to under Article 227 of Constitution of India. The requisite Court fee for CRP under Article 227 of Constitution of India has already been paid. So, if CRP is held not maintainable, under

Section 115 CPC it may be converted under Article 227 of the Constitution of India. He placed reliance in ***COL.Anil Kak (Retd.) v. Municipal Corporation Indore***[1]***, Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur***[2], ***Jaleel Khan v. M.Kamalamma***[3] and ***Blue Cube Germany Assets GmbH & Co. KG v. Vivimed Labs Limited***[4].

14. Learned counsel for the respondent submitted that the CRP under Section 115 CPC being barred by statute, the petition under Article 227 of Constitution of India cannot be entertained and so, CRP under Section 115 CPC can also not be converted into Article 227 petition. In his submission, the legislative intent under the Act, 2015 is for expedition of COS and to provide appeal remedy and not the Revision. He placed reliance in ***M/s.Deep Industries Limited v. Oil and Natural Gas Corporation Limited***[5], ***Surya Dev Rai v. Ram Chander Rai***[6], ***Black Diamond Trackparts Private Limited v. Black Diamond Motors Private Limited*** *and* ***Tata Consultancy Services Limited v. Mr. Vuppu Kanaka Raju***[7] in support of his contentions.

15. On merits, learned counsel for the petitioner confined his submissions to this effect that, even after rejection of the applications

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[1] (2005) 12 SCC 734
[2] (2009) 5 SCC 162
[3] 2001 (2) A.P.L.J. 132 (HC)
[4] 2018 SCC OnLine Hyd 683
[5] (2020) 15 SCC 706
[6] AIR 2003 SCC 3044
[7] CRP.No.199 of 2022 APHC decided on 27.06.2023.

by the impugned order, the petitioner can participate in the COS from the stage the COS is pending. He submitted that in view of the rejection order, the petitioner cannot be permitted to 'set the clock back', but he cannot be restrained from making the submissions/arguments. He submitted that the petitioner may be permitted to advance the arguments in COS and the petitioner does not want to lead evidence or cross-examine the plaintiff's witnesses, so as to 'set the clock back'.

16. In reply, learned counsel for the respondent submitted that inspite of service of summons and so many opportunities granted, the petitioner remained absent. There is no illegality in the order to proceed exparte dated 16.10.2023 and the learned Special Court did not commit any illegality in rejecting the application to set aside the order to proceed exparte. He submitted that the COS having been reserved for judgment on 16.10.2023, the application under Order 9 Rule 7 CPC was not maintainable.

Points for determination:

17. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

18. The points which arise for our consideration and determination are as follows:

A) Whether the impugned order, under Order 9 Rule 7 CPC is interlocutory order and Revision under Section 115 CPC is barred by Section 8 of the Act, 2015?

B) If the answer to (A) is in affirmative, whether CRP under Article 227 of Constitution of India is maintainable and entertainable?

C) Whether CRP under Section 115 CPC can be converted into CRP under Article 227 of the Constitution of India or, even without so converting the powers under Article 227 of Constitution of India can be exercised?

D) Whether inspite of the impugned order under Order 9 Rule 7 CPC, the petitioner can participate in COS No.5 of 2023 from the stage it is pending?

19. We have not framed any point on the legality or otherwise of the impugned order dated 09.08.2024, as the learned counsel for the petitioner confined his submissions to the extent that the petitioner may be permitted to participate in COS from the stage it is pending.

Analysis:

Point A:

20. The order under challenge is rejection of the application under Order 9 Rule 7 CPC to set aside order to proceed exparte. The question is, such an order is interlocutory or final. Recently, this Court

in ***P. Udaya Bhaskara Reddy v. M/s. Sreepada Real Estates & Developers***[8], *inter-alia* on consideration of the ***Madhu Limaye v. State of Maharashtra***[9], ***Kandla Export Corpn. V. OCI Corpn.***[10], ***State v. N.M.T.Joy Immaculate***[11], ***Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.***[12] and ***Shah Babulal Khimji v. Jayaben D. Kania*** [13]on the point of interlocutory/final order, under Section 8 of the Act, 2015 held in para Nos.50, 51 & 52 as under:-

> *"50. From the aforesaid judgments, as also reading of Section 13 and Section 8 of the Commercial Courts Act, we are of the view that the expression 'interlocutory order' in Section 8 has been used as a converse to orders under Clauses (a) to (w) of Order 43 Rule 1 CPC. The order in Section 13 which makes appealable, the orders under Order 43 CPC are of such nature which contains the quality of finality. An interlocutory order in Section 8 of Commercial Courts Act is one made or given during the progress of an action or proceeding which does not finally dispose of the rights of the parties. The test to determination is not whether such order was passed during interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings or not. If it so results, it would not be merely interlocutory in nature. But if it does not result in culminating the proceedings, finally, that is not a final order. At the same time, it could not be necessarily an interlocutory order. If such an order vitally affects a valuable right of the person aggrieved and it adversely affect directly and immediately, then it will not be simply an interlocutory order, but having the trappings of finality and amounting to a final order.*
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> *51. In view of the judgment of the Hon'ble Apex Court in **Shah Babulal Khimji** (supra), most of the interlocutory orders, which contain the quality of finality are clearly specified in Clauses (a) to (w) of Order 43 Rule 1 CPC. Additionally, there may be interlocutory orders though not covered by Order 43 Rule 1, but may also possess the characteristics and trappings of finality inasmuch as those orders may adversely affect the valuable right of a party or decide an important aspect of the trial in an ancillary proceeding. So those orders, which find mention as illustrations in para-120 of **Shah Babulal Khimji** (supra) from Serial No.1 to 15, though interlocutory orders, may be treated as final orders/judgments. Section 8 of Commercial Courts Act, in our view cannot operate as a bar to revision remedy under Section 115 CPC to*

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[8] CRP.No.900 of 2024 dated 11.09.2024
[9] (1977) 4 SCC 551
[10] (2018) 14 SCC 715
[11] (2004) 5 SCC 729
[12] (2001) 7 SCC 401
[13] (1981) 4 SCC 8

such kinds of orders, but such revisional remedy would be subject to the conditions imposed by Section 115 CPC itself.

52. In the present case, the impugned order does not find place in Order 43 Rule 1 CPC clauses (a) to (w). It can also not be covered under any of the illustrations in para-120 of ***Shah Babulal Khimji*** *(supra). Further, it would not result in culminating the proceedings of the commercial suit if an objection to such an order as raised by the petitioner's counsel is sustained, following the same test as laid down in* ***Bhaskar Industries Ltd.*** *(supra)."*

21. Para 120 of ***Shah Babulal Khimji*** (supra) referred in above quoted paras of ***P. Udaya Bhaskara Reddy*** (supra) is as follows:

"120. *Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:*

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff."

22. In ***Arjun Singh v. Mohindra Kumar***[14], the Hon'ble Apex Court specifically considered the nature of the order passed under Order 9 Rule 7 CPC. It was held that the order under Order 9 Rule 7 CPC is directed to ensure the orderly conduct of the proceedings by penalising improper dilatoriness calculated merely to prolong the litigation. It does not put an end to the litigation nor does it involve the determination of any issue in controversy in the suit. The proceedings are of a very summary nature and no appeal is provided against the action of the Court under Order 9 Rule 7, "refusing to set back the Clock". It was further observed that the Code proceeds upon the view, not imparting any finality to the determination of any issues of fact on which the court's action under Order 9 Rule 7 provision is based.

23. Para 16 in ***Arjun Singh*** *(supra)* is as under:

> *"16. The scope of a proceeding under O. IX Rule 7 and its place in the scheme of the provisions of the Code relating to the trial of suits was the subject of consideration in Sangram Singh v. Election Tribunal. Dealing with the meaning of the words "The Court may proceed exparte" in O. IX. Rule 6(1)(a) Bose, J. speaking for the Court said:*
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> > *"When the defendant has been served and has been afforded an opportunity of appearing, then, if he does not appear, the Court may proceed in his absence. But, be it noted, the Court is not directed to make an ex parte order. Of course the fact that it is proceeding exparte will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an exparte decree or other exparte order which the court is authorised to make. All that Rule 6(1)(a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority, namely to proceed in the absence of one of the parties."*

[14] 1963 SCC OnLine SC 43

Dealing next with the scheme of the Code, the learned Judge pointed out that the manner in which the Court could thereafter proceed i.e., after Rule 6(1)(a) was passed would depend upon the purpose for which the suit stood adjourned, and proceeded:

> *"If it is for final hearing, an ex parte decree can be passed, and if it is passed, then O. IX, Rule 13 comes into play and before the decree is set aside the Court is required to make an order to set it aside. Contrast this with Rule 7 which does not require the setting aside of what is commonly, though erroneously, known as the exparte order, No order is contemplated by the Code and therefore no order to set aside, the order is contemplated either." (Italics ours).*

and ***referring to the effect of the rejection of application made under O.IX Rule 7****, he added:*

> *"If a party does appear on the day to which the hearing of the suit is adjourned, he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order 9 Rule 7 makes that clear. Therefore, unless he can show good cause, he must accept all that has gone before and be content to proceed from the stage at which he comes in."*

That being the effect of the proceedings, ***the question next arises what is the nature of the order*** *if it can be called an order or the nature of the adjudication which the Court makes under O. IX. Rule 7? In its essence it is directed to ensure the orderly conduct of the proceedings by penalising improper dilatoriness calculated merely to prolong the litigation.* ***It does not put an end to the litigation nor does it involve the determination of any issue in controversy in the suit.*** *Besides, it is obvious that the proceeding is of a very summary nature and this is evident from the fact that as contrasted with O. IX, Rule 9 or O. IX. Rule 13, no Appeal is provided against action of the Court under O. IX. Rule 7. "refusing to setback the Clock".* ***It is, therefore, manifest that the Code proceeds upon the view not imparting any finality to the determination of any issues of fact on which the court's action under that provision is based****....."*

24. As is evident, the order of the nature as in the present case, do not fall under any of the clause 1 to 15 of para 120 of ***Shah Babulal Khimji*** (supra). Further, it is not disputed and is also clear from perusal

of Order 43 Rule 1 CPC that the order is not covered by any of the clauses (a) to (w) of Order 43 Rule 1 CPC. Certainly, order under Order 9 Rule 7 CPC does not bring an end to the proceedings of COS nor does it involve determination of any issue in controversy in the COS. We hold that the order, therefore, is not a final order, but is an interlocutory order under Section 8 of the Act, 2015 and the CRP under Section 115 CPC is barred by Section 8 of the Act, 2015.

Point B:

25. On the point of Bar of Section 8 for revision under Section 115 CPC against interlocutory order, qua the maintainability and entertainability of CRP under Article 227 of Constitution of India, in ***P. Udaya Bhaskara Reddy*** (supra) this Court *inter-alia* referring to the judgments of Hon'ble Apex Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[15], ***Garment Craft v. Prakash Chand Goel***[16]***, Raj Shri Agarwal @ Ram Shri Agarwal v. Sudheer Mohan***[17]***,*** and ***M.V. Ramana Rao v. N. Subash***[18] held as under in para Nos.70, 71 & 72:

> *70. From the aforesaid judgment, it is evident that the bar under the statute with respect to any specific remedy is to be confined to that remedy only. In the present case, following the said principle, the bar under Section 8 of the Commercial Courts Act against the remedy of revision is from an interlocutory order. So, if the order is the interlocutory in nature, passed under the Commercial Courts Act, revision cannot be filed before the forum provided for revision, but when it comes to the remedy of this Court under Article 227 of*

[15] (2010) 8 SCC 329
[16] (2022) 4 SCC 181
[17] 2022 SCC OnLine SC 1775
[18] CRP.No.6475/2018, TGHC, decided on 10.04.2019

the Constitution of India, such a bar cannot be read, as a bar to the maintainability or entertainability of the petition under Article 227 of the Constitution of India. It is well settled in law that the remedy provided by the Constitution and before the Constitutional Court cannot be barred by any provision of any statute. The entertainability of the petition under Article 227 and the scope of interference or no interference at all by this Court in the exercise of the judicial discretion is one thing, which is quite different from the petition being maintainable under Article 227 of the Constitution of India.

71. In our view, the bar under Section 8 of the Commercial Courts Act to maintainability of the civil revision petition against the interlocutory order is confined to the civil revision petition under Section 115 of CPC and such bar does not operate to bar the maintainability and the jurisdiction under Article 227 of the Constitution of India of this Court.

72. The question still remains if this Court should or should not entertain the petition under Article 227 of the Constitution of India. We are not oblivious that when a statutory remedy is available, this Court would ordinarily refrain from invoking the jurisdiction under Article 227 of the Constitution of India, but that is self imposed restriction and even statutory remedy would not bar the maintainability or entertainability of the petition under Article 227 of the Constitution of India. The remedy against the impugned order is available, but not at this stage. The same may be in appeal, against the final judgment/decree if it goes against the petitioner. Here, we may again refer to the observations of the Hon'ble Apex Court in ***Surya Dev Rai*** *(supra) in para-39, as also reproduced in* ***State of Gujarat*** *(supra) that "……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****".*

26. In ***Blue Cube Germany Assets GmbH*** (supra), the High Court of Hyderabad observed that though the nomenclature given to the petition filed under Article 227 of the Constitution is Civil Revision Petition, it is not equivalent to a revision petition under Section 115 CPC. The power of judicial superintendence under Article 227 of the Constitution cannot be equated to ordinary revisional jurisdiction. The argument as advanced in that case that mere nomenclature given to a

petition filed under Article 227 of the Constitution would bring it within the bar envisaged by Section 8 of the Act of 2015 was not accepted and it was observed that it is only the ordinary revisional jurisdiction vested in the High Court that is barred by Section 8 of the Act, 2015 and not the power of superintendence. The contention as raised therein that the CRP under Article 227 was not maintainable was also rejected.

27. Relevant part in para Nos.11 & 12 in ***Blue Cube Germany Assets GmbH*** (supra), are as under:

> *"11. Before parting with the case, we may refer to the contention of Mr.V.Hariharan, learned counsel, as to the maintainability of the civil revision petition, only to reject it. The learned counsel would contend that Section 8 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('for brevity "the Act of 2015'), bars any revision application or petition being filed against an interlocutory order of a Commercial Court and therefore, this Court would have no power to entertain the present civil revision petition.*
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> *12. This argument loses sight of the fact that though the nomenclature given by this Court to a petition filed under Article 227 of the Constitution is 'civil revision petition', it is not equivalent to a revision petition under Section 115 CPC. The power of judicial superintendence vesting in this Court under Article 227 of the Constitution cannot be equated to ordinary revisional jurisdiction. Be it noted that in several High Courts, petitions filed under Article 227 of the Constitution are not referred as 'revisions' as is being done in this Court, but as writ petitions (civil).* ***The argument of the learned counsel that the mere nomenclature given by this Court to a petition filed under Article 227 of the Constitution would bring it within the bar envisaged by Section 8 of the Act of 2015 therefore cannot be accepted. It is only the ordinary revisional jurisdiction vesting in this Court that is barred by Section 8 of the Act of 2015 and not the power of superintendence vesting in this Court under the Constitution. Needless to sate, a statute cannot control the Constitution****."*

28. Thus, we are of the considered view that CRP under Section 115 CPC is barred by Section 8 of the Act, 2015, against interlocutory

order, but CRP under Article 227 of Constitution of India cannot be barred and is maintainable.

Entertainability of CRP Under Article 227:

29. In ***Shalini Shyam Shetty*** (supra) the Hon'ble Apex Court formulated the principles on the exercise of High Courts' jurisdiction under Article 227 of Constitution of India. It was held as under in Para 49:

> *"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 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 restrain 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 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 once 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 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 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."

30. In ***Garment Craft v. Prakash Chand Goel*** [19] the Hon'ble Apex Court observed and held as under:

> *"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.* ***The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice****. The power under Article 227 is exercised sparingly in appropriate cases, like when 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 that the court or tribunal has come to.* ***It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.****"*

31. In ***K.P.Natarajan v. Muthalammal*** [20] the Hon'ble Apex Court held as under:

> *"21. The contention that in a revision arising out of the dismissal of a petition under Section 5 of the Limitation Act, 1963, the High Court cannot set aside the exparte decree itself, by invoking the power under Article 227, does not appeal to us.* ***It is too well-settled that the powers of the High Court under Article 227 are in addition to and wider than the powers under Section 115 of the Code****. In Surya Dev Rai v. Ram Chander Rai, this Court went as far as to hold that even certiorari under Article 226 can be issued for correcting gross errors of jurisdiction of a subordinate Court. But the correctness of the said view in so far as it related to Article 226, was doubted by another Bench, which resulted in a reference to a three member Bench. In Radhey Shyam v.Chhabi Nath, the three member Bench, even while overruling Surya Dev Rai (supra) on the question of jurisdiction under Article 226, pointed out* ***that the jurisdiction under Article 227 is distinguishable. Therefore, we do not agree with the contention that the High Court committed an error of jurisdiction in invoking Article 227 and setting aside the exparte decree.****"*

32. Learned counsel for the respondents placed reliance in the case of ***M/s.Deep Industries Limited*** (supra) to contend that in that case it

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[19] (2022) 4 SCC 181
[20] (2021) 15 SCC 817

was held that The Arbitration and Conciliation Act, 1996 is self contained code and consequently, once the remedy was available under Section 37(2) of the said Act, the petition under Article 227 should not be maintainable. He emphasised that the Act, 2015 is also a self contained code and once the revision remedy is not provided against the interlocutory order, the petition under Article 227 should also not be entertained, as the legislative intent is to minimize the judicial intervention in the matters of commercial disputes before the Commercial Courts.

33. Para 13 in ***M/s.Deep Industries Limited*** (supra) reads as under:

> *"13. 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 herein above* ***so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."***

34. The Hon'ble Apex Court in ***M/s.Deep Industries Limited*** (supra) held that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37 of the Arbitration Act, the entire arbitral process would be derailed and would not come to fruition for many years but at the same time it was also held that Article 227 of Constitution of India is a constitutional

provision which remains untouched by the non-obstante clause of Section 5 of the Arbitration Act. The Hon'ble Apex Court observed 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, that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

35. In ***Black Diamond*** (supra), upon which learned counsel for the respondent placed reliance, the Delhi High Court held that the remedy of revision under section 115 CPC being barred, the same relief cannot be sought by means of filing a petition under Article 227 of the Constitution of India as that would render the bar under the Commercial Courts Act otiose. However, the Delhi High Court further held that the "interference under Article 227 of the Constitution of India can only be made in cases of jurisdictional error or where there is manifest error in the face of the record".

36. In ***Tata Consultancy Services*** (supra), the Co-ordinate Bench of this Court though opined that Article 227 of Constitution of India cannot be used as a method to circumvent Section 8 of the Act, 2015, but also observed that a proceeding filed under Article 227 of the Constitution of India, should make out a case of patent perversity,

manifest failure of justice and/or exercise of jurisdiction which is not conferred on the Tribunal, Court etc.

37. So, notwithstanding the bar of the remedy under the statute, the jurisdiction under Article 227 can be exercised. The High Court can interfere in exercise of its power of superintendence when there has been a patent perversity; a gross and manifest failure of justice or the basic principles of natural justice have been flouted and to ensure that the law is followed by the Courts by exercising jurisdiction vested in them and by not declining to exercise the jurisdiction vested.

38. We are not oblivious that the statutory provisions under the Act, 2015 provides for a speedy disposal of the matters covered by the Act, 2015. But, the 'speedy disposal consideration' would not come in the way of the exercise of jurisdiction and power, with the orders which are passed patently lacking in inherent jurisdiction, or are passed in flagrant violation of the principles of law or justice.

Point C:

39. Now we consider if CRP under Section 115 CPC can be converted into petition under Article 227 of Constitution of India.

40. The law is well settled. In ***COL.Anil Kak*** (supra), the High Court treated the petition filed before it under Section 115 CPC, as proceeding under Article 227 of the Constitution of India. The Hon'ble Apex Court held that the High Court rightly decided to permit the

revision petitioners before it, to convert the same a proceeding under Article 227 of Constitution of India. The Hon'ble Apex Court further observed that the court could have done it on its own, even without a motion in that behalf by the petitioner.

41. Para 2 of ***COL.Anil Kak*** (supra) is as under:

> *"2. All that the High Court has done is to treat the petition filed before it under Section 115 of the Code as a proceeding initiated under Article 227 of the Constitution. The respondents had filed the revision originally and during the pendency of that revision the High Court appears to have taken a view that an order in an appeal arising from a proceeding under Order 39 Rule 1 and 2 of the Code, could not be challenged under Section 115 of the Code since the order was in the nature of an interlocutory order.* ***In such a situation in our view, the High Court rightly decided to permit the revision petitioners before it, to convert the same as a proceeding under Article 227 of the Constitution. After all, the court could have done it on its own, even without a motion in that behalf by the petitioner.*** *We see absolutely no ground to interfere with the said order on the grounds raised in this special leave petition. Hence, this special leave petition is dismissed.*"

42. In ***Jaleel Khan*** (supra), the High Court of Judicature, Andhra Pradesh at Hyderabad observed that the aggrieved party can approach the High Court under Article 227 of Constitution of India assailing the order passed in an interlocutory application when he has no remedy under the statute. There is no legal bar. The conversion of petition originally filed under Section 115 of the Code into a petition under Article 227 of the Constitution of India is permissible.

43. Para Nos.31 & 32 in ***Jaleel Khan*** (supra), are as under:

> *"31. It is further made clear that we are only dealing with the matter regarding* ***conversion of a petition originally filed under Section 115 of the Code into a petition under Article 227 of the Constitution of India and for reasons given above we hold that it is permissible****. But, whether in the facts of this case a petition under Article 227 would be maintainable or not is*

a question, which will have to be decided by the Court after conversion. Any observations made should not be taken as an expression of opinion that every order passed at the interim stage by the Rent Controller is challengeable under Article 227.

32. For the foregoing reasons, we are of the considered view that in appropriate cases where the fact situation warrants a petition filed under Section 115 of the Code can be converted into a petition under Article 227 of the Constitution of India on the principle of ex debito justitiae. The reference is answered accordingly*."*

44. In ***Nawab Shaqafath Ali Khan*** (supra) the Hon'ble Apex Court held that if the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfilment of other conditions, could even convert a revision application or a writ petition into an appeal or vice versa in exercise of its inherent power. The Hon'ble Apex Court further observed that it is not correct to contend that even if the revisional jurisdiction is not available, a remedy in terms of Articles 226 and 227 of the Constitution of India would also not be available in law.

45. Para Nos.45 & 48 in ***Nawab Shaqafath Ali Khan*** (supra) are as under:

"45. ***It is not correct to contend that even if the revisional jurisdiction is not available, a remedy in terms of Articles 226 and 227 of the Constitution of India would also not be available in law****. This aspect of the matter has been considered by this Court in Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] opining that not only the High Court can exercise its supervisory jurisdiction for the purpose of keeping the subordinate courts within the bounds of its jurisdiction as envisaged under Article 227 of the Constitution of India; even a writ of certiorari can be issued wherefor the subordinate or inferior courts would be amenable to*

the superior courts exercising power of judicial review in terms of Article 226 thereof.

48.If the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, ***in a given case it, subject to fulfilment of other conditions, could even convert a revision application or a writ petition into an appeal or vice- versa in exercise of its inherent power****. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out."*

46. So, CRP under Section 115 CPC can be converted in CRP under Article 227 of Constitution of India. It is permissible, and it can be done even without a motion in that behalf.

47. The petitioner has already filed a memo requesting to convert this CRP to under Article 227 of Constitution of India. He has also paid the requisite court fee payable on CRP under Article 227 of Constitution of India.

48. We consequently, treat the present CRP under Section 115 CPC as under Article 227 of the Constitution of India. We exercise our powers under Article 227 of Constitution of India.

Point D:

49. Order 9 Rule 7 of CPC reads as under:

"7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. - *Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."*

50. In ***Sangram Singh v. Election Tribunal***[21], the Hon'ble Apex Court observed that the rule cannot be read that the defendant cannot be allowed to appear at all if he does not show good cause. All that it means is that he cannot be relegated to the position he would have occupied if he had appeared. The defendant has to be allowed to participate in the proceedings from the date of his appearance.

51. Para 27 of ***Sangram Singh*** *(supra)* is reproduced as under:

> *"27. Then comes Rule 7 which provides that if at an adjourned hearing the defendant appears and shows good cause for his "previous non-appearance", he can be heard in answer to the suit*
> *"as if he had appeared on the day fixed for his appearance".*
> *This cannot be read to mean, as it has been by some learned Judges, that he cannot be allowed to appear at all if he does not show good cause.* ***All it means is that he cannot be relegated to the position he would have occupied if he had appeared."***

52. In ***Arjun Singh*** (supra) the Hon'ble Apex Court on the scope of Order 9 Rule 7 CPC held as under in para 18:

> *".....Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of O. IX. Rule 7.* ***The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit exparte'. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned.*** *If the entirety of the "hearing" of a suit has been completed and the Court being competent to pronounce judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX. Rule 1, there is clearly no adjournment of "the hearing" of the suit, for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to hear the judgment pronounced and that on the terms of Rules 6 & 7 he would permit him to do that. If, therefore, the hearing was completed and the suit was not "adjourned for hearing", O. IX, Rule 7 could have no application and the matter would stand at the stage of O. IX, Rule 6 to be followed up by the passing of an ex parte decree making Rule 13 the only provision in order IX applicable....."*

[21] 1955 SCC OnLine SC 21

53. In ***Arjun Singh*** (supra) in para 20, the Hon'ble Apex Court further held as under:

".....Having thus exhausted the cases where the defendant is not properly served, r. 6(1)(a) enables the Court to proceed exparte where the defendant is absent even after due service. Rule 6 contemplates two cases: (1) The day on which the defendant fails to appear is one of which the defendant has no intimation that the suit will be taken up for final hearing for example, where the hearing is only the first hearing of the suit, and (2) where the stage of the first hearing is passed and the hearing which is fixed is for the disposal of the suit and the defendant is not present on such a day. The effect of proceeding ex parte in the two sets of cases would obviously mean a great difference in the result. So far as the first type of cases is concerned it has to be adjourned for final disposal and, as already seen, it would be open to the defendant to appear on that date and defend the suit. In the second type of cases, however, one of two things might happen. The evidence of the plaintiff might be taken then and there and judgment might be pronounced. In that case O. IX, r. 13 would come in. The defendant can, besides filing an appeal or an application for review, have recourse to an application under O. IX, r. 13 to set aside the ex parte decree. The entirety of the evidence of the plaintiff might not be concluded on the hearing day on which the defendant is absent and something might remain so far as the trial of the suit is concerned for which purpose there might be a hearing on an adjourned date. On the terms of O. IX, r. 7 if the defendant appears on such adjourned date and satisfies the Court by showing good cause for his non- appearance on the previous day or days he might have the earlier proceedings recalled" set the clock back" and have the suit heard in his presence. ***On the other hand, he might fail in showing good cause. Even in such a case he is not penalised in the sense of being forbidden to take part in the further proceedings of the suit or whatever might still remain of the trial, only he cannot claim to be relegated to the position that he occupied at the commencement of the trial****. Thus every contingency which is likely to happen in the trial vis-a-vis the non-appearance of the defendant at the hearing 'of a suit has been provided for and O. IX, r. 7 and O. IX, r. 13 between them exhaust the whole gamut of situations that might arise during the course of the trial. If, thus, provision has been made for every contingency, it stands to reason that there is no scope for, the invocation of the inherent powers of the Court to make an order necessary for the ends of justice. Mr. Pathak however, strenuously contended that a case of the sort now on hand where a defendant appeared after the conclusion of the hearing but before the pronouncing of the judgment had not been provided for. We consider that the suggestion 'that there is such a stage is, on the scheme of the Code, wholly unrealistic. In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) Where the hearing is adjourned or (2) where the hearing is completed. Where the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that O. XX, r. 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by O. IX, r. 7 is passed the next stage is only the passing of a decree which on the terms of O. IX, r. 6 the Court is*

competent to pass. And then follows the remedy of the party to have that decree set aside by application under O.IX. r. 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of O. IX, r. 7....."

54. In ***A.P.Southern Power Distribution Power Company Limited (APSPDCL) v. Hinduja National Power Corporation Limited***[22], the Hon'ble Apex Court observed as under in para 95:

"95. It can be seen that this Court in Arjun Singh (supra) has held that CPC contemplates two stages of the trial in the suit: (1) where the hearing is adjourned; and (2) where the hearing is completed. It has been held that where the hearing is completed, the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It has been held that there is no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order 9 Rule 7.

55. Therefore, the well settled position in law is that so long as the hearing of the suit is not completed an application under Order 9 Rule 7 CPC can be filed. If the cause shown is found to be sufficient, the Court shall set aside the order to proceed ex-parte. In such a case, 'set back the clock' would be from the stage the defendant was set exparte. But, if the order to proceed ex-parte passed under Order 9 Rule 7 stands, because either any application to set aside the order to proceed ex parte has not been filed or if filed is rejected, as the cause shown is not sufficient, still, the defendant is at liberty to proceed and participate in the suit proceedings from the stage it is pending. If the suit has been reserved for judgment, the application would not be

[22] (2022) 5 SCC 484

maintainable. Then, the defendant would have to wait for the final verdict and if it goes against him, he can file an application under Order 9 Rule 13 CPC or he may choose to challenge the final decree in appeal.

56. In the present case, on the date fixed for the judgment dated 16.10.2023, the applications were filed but the judgment was not pronounced. In one sense it can be said that the applications were filed on the date fixed for delivery of judgment, but in view of the fact that the judgment was not pronounced and later on the presiding officer was transferred and the new presiding officer fixed the COS for hearing, it cannot be said that the application was not maintainable, as has been submitted by the learned counsel for the respondent. In view of the subsequent development, the application has rightly been considered and not rejected on the ground of maintainability.

57. The COS is pending at the stage for arguments of the plaintiff. Consequently, even if the impugned order stands, the petitioner has right to participate from the stage it is pending i.e., for arguments. He cannot be stopped or restrained from making arguments.

58. We are of the view that the present is a case in which the power under Article 227 of Constitution of India deserves to be invoked. If the COS is decided without affording opportunity to the petitioner to advance the arguments, that would be flagrant violation of the

fundamental principles of law and justice. The Special Court patently lacks jurisdiction to restrain the petitioner from participating in COS, from the stage it is pending. Further, providing of opportunity of hearing at the pending stage of arguments, in view of the settled law, would serve the purpose and the legislative intent of expeditious disposal of the suit of commercial nature and would avoid multiplicity at future stage, on the ground of not providing opportunity and passing the final decree, in violation of the fundamental principles of law and procedure under Order 9 Rule 7 CPC. We entertain the petition following ***Surya Dev Rai v. Ram Chander Rai***[23], where it was held ".....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....." and exercise our power under Article 227 of Constitution of India.

Conclusion:

59. Thus considered our conclusions are:

i) the impugned order under Order 9 Rule 7 CPC is an interlocutory order.

[23] AIR 2003 SCC 3044

ii) the remedy of revision under Section 115 CPC is barred under Section 8 of the Commercial Courts Act, 2015.

iii) the petition under Article 227 of the Constitution of India is maintainable.

iv) the exercise of power under Article 227 of Constitution of India is discretionary, governed by the dictates of judicial conscience, judicial experience and practical wisdom of the judge.

v) the power under Article 227 of Constitution of India, may be exercised in cases, *interalia*, where there has been a patent perversity, gross and manifest failure of justice, or where the basic principles of natural justice or of procedure have been flouted, in order to ensure that the law is followed and to keep the subordinate Courts/ Tribunals, within the bounds of their authority.

vi) Civil Revision Petition under Section 115 of CPC can be converted into CRP under Article 227 of Constitution of India. It can be done even suo motu. The power under Article 227 can also be exercised in a CRP filed under Section 115 CPC, the supervisory power being wider and in addition to powers under Section 115 CPC as well.

vii) Even if the order to proceed exparte under Order 9 Rule 7 CPC stands, the defendant has a right to participate in the suit from the stage the proceedings are pending, but he cannot set the clock back unless the order under Order 9 Rule 7 CPC is set aside.

viii) The COS No.5 of 2023 being pending at the stage of arguments, the petitioner cannot be stopped from participating from this stage. He cannot be restrained from advancing his arguments.

Result:

60. In the result, both the CRPs are partly allowed in the following terms:

a) The order impugned, though is maintained, the petitioner is at liberty to participate in the proceedings of COS from the stage it is pending before the Special Judge, i.e., the stage of the arguments.

b) If the petitioner so appears, on the date(s) now to be fixed, on production of copy of this judgment, the petitioner in COS shall be permitted to participate from the stage COS is pending, 'without setting the clock back'.

c) If the petitioner does not appear or does not participate, still the learned Special Court shall proceed in COS, in accordance with law and decide the COS expeditiously.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand dismissed.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: 26.09.2024
Note: L.R. copy be marked
B/o.
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HONOURABLE SRI JUSTICE RAVI NATH TILHARI

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION NOs.1933 & 1934 of 2024

Date: 26 .09.2024
Note: L.R. copy be marked
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