

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&
*THE HONOURABLE SRI JUSTICE CHALLA
GUNARANJAN**

+ C.R.P.Nos.349 & 497 OF 2024

% 07.05.2025

m/S. Unitech – NCC (JV) a
Joint venture of M/s. United
Ltd., Madhapur, Hyderabad

.....Petitioner

And:

\$ M/s. I.S.N. Raju
Infrastructures (P) Ltd
and others.

....Respondents.

!Counsel for the petitioner: Sri D.S. Sivadarshan

^Counsel for the respondent No.1: Sri Venkata Srujan Vegi.
Counsel for the 2nd respondent: Sri M. Anand Kumar, SC for National
Highways Authority of India.

<Gist:

>Head Note:

? Cases referred:

- 1.2024 SCC OnLine AP 4102
- 2.(2016) 11 SCC 296
3. (2021) 13 SCC 71
- 4.(2010) 8 SCC 329
- 5.(2022) 13 SCC 320

HIGH COURT OF ANDHRA PRADESH

*** * * ***

C.R.P.Nos.349 & 497 OF 2024

DATE OF JUDGMENT PRONOUNCED: 07.05.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

- | | |
|---|--------|
| 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 |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

C.R.P.Nos.349 & 497 OF 2024

COMMON JUDGMENT: per the Hon'ble Sri Justice Ravi Nath Tilhari:-

Heard Sri D.S. Sivadarshan, learned counsel for the petitioner and Sri K. P. Sundar Rao, learned counsel representing Sri Venkata Srujan Vegi, learned counsel for the respondent No.1/plaintiff.

2. Sri Mudunuri Anand Kumar, learned standing counsel appeared for National Highways Authority of India (in short, NHAI), the 4th respondent.

I. FACTS:

3. The petitioner M/s. Unitech – NCC (IV) is the 1st defendant in C.O.S.No.17 of 2018, (in short, COS suit) filed by the plaintiff-1st respondent on the file of the court of the Special Judge for Trial Disposal of Commercial Disputes, Visakhapatnam (in short, the Special Court).

4. The suit was filed against the petitioner and the respondents 2 to 4 (defendants 2,3 and 4 respectively in

C.O.S) for a decree against the defendants jointly and severally for a sum of Rs.6,56,64,661/- and for subsequent compound interest @ 10.5% p.a on Rs.1,39,20,192/- from the date of filing of the suit till realisation, as also for costs of the suit.

5. 1st defendant filed the written statement inter alia denying the material averments of the plaint and praying to dismiss the COS.

6. The plaintiff-respondent No.1 filed I.A.No.472 of 2023 under Order VII Rule 14 read with Section 151 Code of Civil Procedure, 1976 (in short C.P.C), to grant leave and receive the document i.e extract of Board Resolution of the plaintiff company in original dated 30.06.2023, supported with the affidavit. It was inter alia submitted that during the cross-examination of P.W.1, namely Ravi Kumar Raju, Executive Director of the plaintiff company, the learned counsel for the defendants 1 and 2 got elicited that the plaintiff did not file the extract of resolution of the Board of the plaintiff company for filing the suit though no such defence was taken in the

written statement. Consequently, to bring on record, the resolution of the Board of Directors of the plaintiff company, dated 30.06.2023, ratifying the acts, deeds, evidences etc. of P.W.1 the Executive Director, in connection with the COS was being filed and for recall of witness P.W.1.

7. The plaintiff also filed I.A.No.471 of 2023 supported with affidavit in which, it was stated inter alia that the plaintiff filed I.A.No.267 of 2023 for direction to defendant No.4 to produce the certified copies of certain documents which was allowed on 26.07.2023. Pursuant thereto the 4th defendant – National Highway Authority of India, filed documents. It was prayed to mark the documents as given in the list of documents.

8. The defendants 1 and 2 filed counter to I.A.No.472 of 2023 inter alia that the application for recall of P.W.1 for the purpose of marking the documents i.e resolution passed by the Board of Directors was not maintainable. The plaintiff should have been vigilant and diligent in filing the resolution.

The plaintiff should not be given an opportunity to fill in the lacuna. It was an attempt to drag on the proceedings.

9. They filed separate counter to I.A.No.471 of 2023 inter alia to the same affect, however adding further that there was no reference in the plaint with respect to the legal requirements of Order XI CPC, so as to permit the other evidences by the plaintiff as to the documents produced by the officials of the 4th defendant.

II. ORDER OF LEARNED SPECIAL COURT:

10. The Special Court vide the common order dated 21.12.2023, allowed I.A.No.472 of 2023 and I.A.No.471 of 2023 by receiving the documents and recalling P.W.1.

11. The Special Court observed that the cross-examination of P.W.1 was completed on 04.05.2023. Since then the plaintiff had not adduced any further evidence. In the meantime, he had been filing notice memo, summons, petition etc. but did not take steps for production of the documents. So, his evidence was closed on 01.09.2023. Immediately he filed I.A.No.370 of 2023 and considering the

cause shown I.A.No.370 of 2023 was allowed on 14.09.2023. Still the plaintiff did not adduce any further evidence but filed the two applications I.A.No.471 and I.A.No.472 of 2023. However, considering inter alia that the interest of justice required that one more opportunity be given to the plaintiff to proceed with and complete his further evidence, it allowed I.A.Nos.471 and 472 of 2023 but subject to the conditions imposed.

12. Para 9 of the order dated 14.09.2023 reads as under:

“9. In the result:

1. Plaintiff shall complete his entire evidence within a period of fifteen clear court working days from the date of this order;
2. To fulfil the above, plaintiff shall take all necessary steps, whatever, at a time and not in piecemeal;
3. Plaintiff shall not seek adjournments or file one petition or the other, or some notice memo or the other, or some summons application or the other, one after the other;

4. Plaintiff shall pay Rs.2,000/- (Rupees two thousands only) to D1 & D2 (who alone filed counters) towards costs.

Subject to the above, I.A.No.472 of 2023 is allowed by receiving the document, and I.A.No.471 of 2023 is allowed by recalling P.W.1 for further evidence.”

13. Challenging the common order dated 21.12.2023 in I.A.Nos.471 and 472 of 2023, the C.R.P.Nos.349 and 497 of 2024 have been filed by the defendant No.1 in the COS.

III. SUBMISSIONS OF LEARNED COUNSELS:

14. Learned counsel for the petitioner submitted that the suit was filed by the plaintiff company without authorisation from the Board of Directors of the plaintiff company. Suit could not be filed without any authorisation. The I.A(s) were filed with inordinate delay. He submitted that the applications were not maintainable under Order VII Rule 14 CPC which provision related to the documents relied upon in the plaint but not filed along with the plaint. Order XI CPC as amended by Commercial Courts Act was applicable and it

provided that the plaintiffs must file all documents in their possession and control or custody with the plaint. The resolution of the Board of Directors was a new document. It could not be permitted later on. There was lack of diligence as the resolution was sought to be filed only after the cross-examination of P.W.1. In a Commercial Suit strict procedure of particulars and time limits should be adhered.

15. The learned counsel for the plaintiff-1st respondent raised a preliminary objection regarding the maintainability of the C.R.P(s) on the ground that against the impugned interlocutory order, Revision was barred by Section 8 of the Commercial Courts Act, 2015 (in short Act, 2015) and so the C.R.P under Article 227 of the Constitution of India could also not be maintained.

16. Learned counsel for the petitioner replying the preliminary objection regarding the maintainability, placing reliance in **P. Udaya Bhaskara Reddy vs. Sreepada Real Estates & Developers, Hyderabad and another**¹,

¹ 2024 SCC OnLine AP 4102

submitted that the civil revision petition under Article 227 of the Constitution of India would be maintainable.

17. Learned counsel for the petitioner placed reliance in **Ram Rati vs. Mange Ram (dead) through Legal Representatives and others²**, in support of his contention on the point of recall and examination of witness.

18. Learned counsel for the plaintiff-respondent No.1, supported the impugned order on merits. He submitted that the defendants never raised an objection that there was no resolution of the plaintiff company for institution of the suit, in their written statement filed in the year 2019. It was only during the cross-examination of P.W.1, that fact was elicited. The plaintiff immediately filed the application to bring on record the Board's resolution dated 30.06.2023, by which the Executive Director of the plaintiff company was authorised and all his acts and deeds done in connection with C.O.S. No.17 of 2018 were ratified. He submitted that such rectification could be done subsequent to filing of the suit.

² (2016) 11 SCC 296

19. The learned counsel for the petitioner did not dispute that the ratification could be done by resolution subsequent to the filing of the suit. There is thus no issue on this aspect, involved in these C.R.P(s).

20. The learned counsel for the plaintiff-respondent No.1 further submitted that the Special Court recorded that it was in the interest of justice to grant one more opportunity to the plaintiff to proceed with his further evidence and complete the same. So, no fault can be found in the approach of the learned Special Court, which has allowed the applications subject to the restrictions contained in the order, causing no prejudice to the petitioner.

IV. POINTS FOR CONSIDERATION:

21. The following points arise for our consideration:

A. Whether the petition under Article 227 of the Constitution of India is maintainable?

B. Whether the impugned order suffers from any illegality and calls for interference?

V. CONSIDERATION:

22. We have considered the aforesaid submissions advanced by the learned counsels for the parties and perused the material on record.

POINT-A. PRELIMINARY OBJECTIONS:

23. We first take the preliminary objection regarding maintainability of the petition under Article 227 of the Constitution of India, in view of the bar of the revision by Section 8 of the Act, 2015. There is no dispute raised that the impugned order is an interlocutory order.

24. Recently, a Coordinate Bench of this Court in **P. Udaya Bhaskara Reddy** (supra), on the same issue, held that the bar under Section 8 of the Commercial Courts Act, 2015 cannot operate against the maintainability or entertainability of the petition under Article 227 of the Constitution of India.

25. Paras 70 to 72 of **P. Udaya Bhaskara Reddy** (supra) read as under:-

“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 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 petitioner 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/decreed 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 RNT, J & VN, J CRP No. 900 of 2024 48 which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge".

26. We have no reason to differ and nothing to the contrary has been argued to persuade us to take a different view. So, we hold that the C.R.P under Article 227 of the Constitution of India is maintainable. The preliminary objection is overruled.

POINT-B:

27. Now, coming to the merits, we find from the impugned order that the evidence of the plaintiff was previously closed by order dated 01.09.2023 but the I.A.No.370 of 2023, was allowed and thus the evidence of the plaintiff was reopened. The I.A.Nos.471 of 2023 and 472 of 2023 were filed at the stage when the evidence of the plaintiff was on. The learned Special Court has specifically recorded that in the interest of justice one more opportunity to the plaintiff to proceed with his further evidence and to complete the same deserves to be given. The learned Special Court has exercised its discretion, in the ends of justice

and by imposing the restrictions and the conditions as imposed in the order itself. The learned Special Judge was not oblivious that the trial should not be unnecessarily protracted.

28. Order XI, Rule 1(1) to (6) CPC as amended for the Commercial Courts Act, 2015, relevant for this petition reads as follows :

“1. **Disclosure and discovery of documents**:- (1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only

(i) for the cross-examination of the defendant's witnesses, or

(ii), in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list

shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant."

29. Order 11 Rule 1 Sub-rule (5) of CPC provides that the plaintiff shall not be allowed to rely on the documents, which were in the plaintiff's power, possession, control or custody, and not disclosed along with the plaint or within the extended period set out under the provisions of sub-rules, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. So, what follows from Rule 1(5), is that the documents, which were in the plaintiff's power, possession, control or custody and were not disclosed along with plaint or within the extended period, can be still allowed to be relied upon by the leave of the Court. Such leave shall be granted only upon the reasonable cause being established by the plaintiffs for non-disclosure of those documents and not filing along with the plaint.

30. In ***Sudhir Kumar Alias S. Baliyan V. Vinay Kumar G.B.***,³ the Hon'ble Apex Court observed and held that Order 11 Rule 1 CPC as applicable to the Commercial Courts, brought about a radical change and it mandates the plaintiff to file a list of documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with

³ (2021) 13 SCC 71

the plaint and a procedure provided under Order 11 Rule 1 is required to be followed. It was observed further that, however, the additional documents can be permitted to be brought on record with the leave of the Court as provided in Order 11 Rule 1(4) CPC, which provides that the plaintiffs shall not be allowed, *inter alia*, to rely on the documents which were in the plaintiffs power, possession, control or custody and not disclosed along with the plaint or within the extended period set out in Order 11 Rule 1(4) CPC, except with leave of the Court and which leave shall be granted only upon establishing the reasonable cause. The Hon'ble Apex Court further observed that Order 11 Rule 1(4) CPC, and Order 11 Rule 1(5) shall be applicable only with respect to the documents, which were in plaintiffs power, possession, control or custody and not disclosed along with plaint. The rigour of establishing the reasonable cause in non-disclosure along with plaint therefore, may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.

31. Para 9.6 of **Sudhir Kumar Alias S. Baliyan** (supra)

reads as under:

“.....**9.6.** Therefore a further thirty days time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1 (3) if for any reasonable cause for non disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore plaintiff has to satisfy and establish a reasonable cause for non disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order XI Rule 1 (4) and Order XI Rule 1 (5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.”

32. In **Sugandhi (Dead) by legal representatives and another V. P.Rajkumar, represented by his power agent Imam Oli**⁴, the Hon'ble Supreme Court held that the procedure is the handmade of justice. Procedural and technical hurdles shall not be allowed to come in the way of Court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adverse party, Courts must lean towards doing substantial justice rather than relying upon the procedural and technical violation. The litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out underlying truth in every dispute. Therefore, the Court should take a lenient view when an application is made for production of the documents under sub rule (3).

33. **Sugundhi** (supra) is a case under Order 8 Rule 1-A(3) CPC. Though it is not a case under Order 11 Rule 1(5) CPC, applicable to the Commercial Courts Act, but still the law that procedure is the handmade of justice, equally holds good for Order 11, which provides for the procedure and as such is also a procedural law.

⁴(2020) 10 SCC 706.

34. Applying the principles of law laid down in **Sudhir Kumar Alias S. Baliyan** (supra) and **Sugandhi** (supra) to the facts of the present case, it is evident that the document i.e resolution of the Board sought to be filed with the leave of the Court and allowed by the Court was not in the power, possession, control and custody of the plaintiff at the time of the presentation of the plaint. So, if the document was not in power, possession, control or custody of the plaintiff, the provisions of Order XI Rule 1(5) CPC would not apply as they apply to the documents in power, possession, control or custody of the plaintiff but not disclosed at the time of filing of the plaint.

35. Similarly, the other documents with respect to which the other application has been allowed, those documents were sought to be filed, as pursuant to the direction of the learned trial Court in I.A.No.267 of 2023 filed by the plaintiff to produce the certified copies of certain documents which application was allowed on 26.07.2023, and pursuant thereto the 4th defendant filed those documents, the plaintiff had filed the I.A for the documents mentioned in the said I.A to be marked in evidence. The I.A was filed immediately, after filing of the documents by the

defendant No.4. So, it cannot be said that the plaintiff was not vigilant.

36. In **Ram Rati** (supra), upon which learned counsel for the petitioner placed reliance, paragraphs 11 to 14, which deserve to be reproduced, the Hon'ble Apex Court held as under:

“11. The respondent filed the application under Rule 17 read with [Section 151](#) of the CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. ‘No prejudice is caused to either party’ is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.

12. In *Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate*¹, this principle has been summarized at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of [Order 18 Rule 17 CPC](#) have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to

enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

xxx xxx xxx

28. The power under the provisions of [Order 18 Rule 17 CPC](#) is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground 1 (2009) 4 SCC 410 that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of [Order 18 Rule 17 CPC](#).

29. It is now well settled that the power to recall any witness under [Order 18 Rule 17 CPC](#) can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

13. In [K.K. Velusamy v. N. Palanisamy](#)², the principles enunciated in *Vadiraj* (supra) have been followed, holding at paragraphs- 9 and 10:

“9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the (2011) 11 SCC 275 evidence was being recorded. Order 18 Rule 17 is

primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

14. The rigour under Rule 17, however, does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh evidence. This power can also be exercised at any stage of the suit, even after closure of evidence. Thus, the inherent power is the only recourse, as held by this Court in [K.K. Velusamy](#) (supra) at paragraph-11, which reads as follows:

“11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. [Section 151](#) of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under [Section 151](#) of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

37. In **Ram Rati** (supra), the Hon’ble Apex Court held that the basic purpose of Order VIII Rule 17 CPC is to enable the Court to clarify any position or doubt. The court may either

suo motu or on the request of any party recall any witness at any stage of the suit. It was observed that the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power was held to be discretionary of the court, to be used only sparingly and in case the court decided to invoke the power, it should also see that the trial was not unnecessarily protracted on that ground.

38. In **Ram Rati** (supra) also, the Hon'ble Apex Court held that the rigour under Rule 17, , does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for further examination or cross-examination or even for production of fresh evidence and such power can be exercised at any stage of the suit; even after closure of the evidence.

39. The next submission was that the correct provision of law was not mentioned. As submitted by the petitioner's counsel, the applications, were filed referring to Order VII Rule 14, instead of Order XI, we are not inclined to accept the submission that, those applications for that reason deserve rejection. It is settled

in law that quoting of the wrong provision of law or no provision at law, would not take away the jurisdiction of the court to pass the orders, if the power exists under some provision of law. The same was also not fatal to the application nor it could be said to be not maintainable on that count.

40. The jurisdiction under Article 227 of the Constitution of India is to be exercised sparingly, and not in a routine manner. In **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁵, the Hon'ble Apex Court on analysis of various decisions of the Apex Court formulated the following principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India in para-49, which is as under:

“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

⁵ (2010) 8 SCC 329

history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

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

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

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

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them

and by not declining to exercise the jurisdiction which is vested in them.

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

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

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

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

correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

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

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

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

41. In State of **M.P. v. R.D.Sharma**⁶ the Hon’ble Apex Court reiterated that while exercising the power of superintendence under Article 227 of the Constitution of India, it is well settled legal position that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors.

VI. CONCLUSION:

42. In the conclusion on Point-A, we reject the preliminary objection regarding the maintainability of C.R.P under Article 227 of the Constitution of India and hold the petition to be maintainable. On Point-B, we find no merit in the C.R.P(s), no interference is made with the impugned order.

VII. RESULT:

43. In the result, both the civil revision petitions are dismissed. No order as to costs.

⁶ (2022) 13 SCC 320

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

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Dated:07.05.2025

Note:

L.R copy to be marked.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

C.R.P.Nos.349 & 497 OF 2024

Date: 07.05.2025.

Gk.