VERDICTUM.IN

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No. 900 of 2024

Between:

Sri P. Udaya Bhaskara Reddy

.....PETITIONER

AND

M/s. Sreepada Real Estates & Developers
Hyderabad and another

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **11.09.2024**

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

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

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*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
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! Counsel for the Petitioner : Sri S. Rajan

Counsel for the Respondents 1 & 2 : Smt. S. A. V. Ratnam

< Gist :

> Head Note:

? Cases Referred:

1. 2004 (5) ALD 653
2. 2004 (1) ALD 557
3. 2012 (2) ALT 93
4. (1977) 4 SCC 551
5. 2022 SCC OnLine SC 1775
6. CRP.No.6475/2018, TGHC
   Decided on 10.04.2019
7. 2021 SCC OnLine Del 3946
8. 2004 CJ (AP) 1112
9. 2007 (5) ALD 618
10. CM(M)2030/2023 & CM Appl.63774/2023
    Delhi HC, decided on 11.12.2023
11. (2018) 14 SCC 715
12. (1977) 4 SCC 137
13. AIR 1968 SC 733
14. (2004) 5 SCC 729
15. AIR 1949 PC 1
16. (2000) 6 SCC 195

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17. (2001) 7 SCC 401
18. (1981) 4 SCC 8
19. (2010) 8 SCC 329
20. (2022) 4 SCC 181
21. (2022) 13 SCC 320
22. (2021) 15 SCC 817
23. (2003) 6 SCC 675
24. (2015) 5 SCC 423
25. 2018 SCC OnLine Guj 1515

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITON No. 900 of 2024

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri S. Rajan, learned counsel for the petitioner and Smt. S. A. V. Ratnam, learned counsel for the respondents 1 & 2.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the petitioner/1st defendant in COS No.10 of 2018 on the file of the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam (in short 'Special Judge'), challenging the Order dated 20.03.2024 in I.A.No.356 of 2023 in I.A.No.937 of 2018 in COS No.10 of 2018.

3. Respondents No.1 & 2 are the plaintiffs No.1 & 2, and the respondents No.3 to 5 are the defendants No.2 to 4 respectively in the COS No.10 of 2018.

I. Facts:

4. The above commercial suit was filed by the respondents 1 and 2 against the petitioner and the respondents 3 to 5 for specific performance of the Development Agreement dated 31.01.2023 or alternatively for recovery of an amount of Rs.1,71,36,372/- together with subsequent interest and also for other reliefs.

5. Respondents No.1 & 2 also filed I.A.No.937 of 2018 for injunction thereby restraining the petitioner and the respondents 3 to 5 from alienating

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the suit property and also for other reliefs. Vide docket order dated 04.07.2018 in I.A.No.937 of 2018, the development agreement was marked as Ex.P1.

6. The petitioner/defendant No.1 filed I.A.No.356 of 2023 under Order XIII Rules 3 and 4 read with Section 151 of Code of Civil Procedure (in short 'CPC') with the prayer to de-exhibit/reject Ex.P1 for non-payment of proper stamp duty thereon. He *inter alia* submitted in the affidavit that, the marking of Exs.P1 to P10 and Exs.R1 to R9 was tentative for identification in the injunction petition and could not be construed as documents on record in the suit. With respect to Ex.P1, he further stated that it was a development agreement, engrossed on stamp paper of Rs.50/-. The same was required to be stamped as per Article 6 (B) of Schedule 1A of Indian Stamp Act. The said objection was not taken at the time of marking of the documents, by mistake, that the marking was only tentative in the injunction petition, though the plaintiffs/respondents had no right to plead their case based on Ex.P1, even in the injunction petition, without payment of stamp duty, which was mandatory. In those circumstances, the petitioner requested that the document Ex.P1 be de-exhibited, as the same was not proved as per the provisions of the Indian Stamp Act.

7. The respondents 1 and 2 filed counter and contested the petition. They *inter alia* raised the objection that I.A.No.356 of 2023 under Order XIII Rules 3 & 4 CPC was not maintainable. The suit was filed for specific performance of the development agreement dated 31.01.2013 or alternatively, for recovery of the amount of Rs.1,71,36,372/- together with subsequent

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interest and for other reliefs. They denied that Ex.P1 was required to be stamped, as per Article 6 (B) of Schedule 1A of the Indian Stamp Act. They contended that the said provision dealt with construction of a house or building including a multi unit house or building or unit of apartment/flat/portion of multistoried building or for development/sale of any other immovable property. They contended that the agreement was for development of land into lay out. As such, Article 6 (B) of Schedule 1A of the Indian Stamp Act had no application. They also raised the plea that the law does not permit for de-exhibiting document once exhibited. The admissibility of the document could be decided in trial.

8. The respondents No.3 to 5 did not file any counter to I.A.No.356 of 2023.

II. Order of the learned Special Judge:

9. The learned Special Judge, by the impugned Order dated 20.03.2024 partly allowed the I.A.No.356 of 2023, subject to the observations, as made in para-17 of the Order, which reads as under:

> "17. In the result, it is held that;
>
> a. the document does not fall under Article 6 (B) and it falls under Article 6 (C);
>
> b. since the document bears the stamp duty of Rs.50/- only, the deficit stamp duty under Article 6 (C) along with penalty in accordance with law shall have to be paid by plaintiffs for admitting it into evidence;
>
> c. in the event of failure of payment as aforesaid within the time allowed by the Court, the document will be rejected or de-exhibited;"

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10. The learned Special Judge held that in para-III(c) of the plaint, it was specifically pleaded that the agreement was in respect of agricultural land and in para-III(d) it was pleaded that permission for LP No.4/2017 was obtained. In the written statement of Defendant No.1 (petitioner), he pleaded in para No.19 that he and his wife Defendant No.2 paid some amount for conversion of agricultural land and LP No.4/2017 was obtained.

11. The learned Special Judge observed that the land so involved thus appeared to be agricultural land and hence the agreement did not fall within the ambit of Article 6 (B). In so holding, it placed reliance in the case of ***Saranam Peda Appaiah v. S. Narasimha Reddy***[1]. It observed that the document was one for development of land into lay out and not for sale or development of immovable property as contemplated by and within the realm of Article 6 (B).

12. Learned Special Judge, also referred to the case of ***Pechitti Ramakrishna v. Nekkanti Venkata Manohara Rao***[2] to observe that Article 6 (C) should be construed to be a case not falling under either Article 6 (A) or Article 6 (B) which would be applicable only in the cases specified by it and cannot override the general provision of Article 6 (A). It also referred to the case of ***K. Sudhakar Reddy v. Sudha Constructions***[3] to observe that since the document was an agreement for development, it would not fall under Article 6 (B).

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[1] 2004 (5) ALD 653
[2] 2004 (1) ALD 557
[3] 2012 (2) ALT 93

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13. The learned Special Judge recorded that the document was not stamped as per Article 6 (C). Only upon payment of deficit stamp duty with penalty, in accordance with law, it could be received in evidence. It observed that although the 1st defendant/petitioner, sought to de-exhibit/reject the document, but since judicial determination had not taken place so far, an opportunity should be provided to the plaintiffs to make good the deficit stamp duty with penalty and only in the event of the plaintiffs' failure to do so, the document could be rejected or de-exhibited.

III. <u>Submissions of the learned counsel for the petitioner:</u>

14. Learned counsel for the petitioner submitted that the document Ex.P1 is covered under Section 6 (B) of Schedule 1A of the Indian Stamp Act. It related to the construction or development of land, which is immovable property. Consequently, the learned Special Judge was not right in holding that the document did not fall under Article 6 (B) but was under Article 6 (C). He submitted that, against only this part of the judgment in para-17 (a), the present revision petition has been filed.

15. Learned counsel for the petitioner next submitted that the civil revision petition under Article 227 of the Constitution of India is maintainable to challenge the Order dated 20.03.2024. The order is not appealable under Order 43 Rule 1 CPC read with Section 13 of the Commercial Courts Act, 2015 (in short 'the Act'). The Order is final in nature. He submitted that Section 8 of the Commercial Court Act is not a bar to maintain the petition under Article 227 of the Constitution of India, which is the only remedy available. He further

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submitted that nomenclature is not material once the power to entertain challenge to the impugned order is with this Court.

16. Learned counsel for the petitioner placed reliance on the following judgments:

1) ***Saranam Peda Appaiah*** (1 supra)
2) ***Madhu Limaye v. State of Maharashtra***[4]
3) ***Raj Shri Agarwal @ Ram Shri Agarwal v. Sudheer Mohan***[5]
4) ***M. V. Ramana Rao v. N. Subash***[6]
5) ***Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd.***[7]

IV. <u>Submissions of the learned counsel for respondents No.1 & 2:</u>

17. Learned counsel for the respondents contended that the agreement-Ex.P1 is for development of agricultural lands into layout and not with regard to construction/sale of building etc., Section 6 (B) of Schedule-1A had no application. There is no illegality in the order of the Special Court even to the extent of challenge as per para-17(a) of the impugned order.

18. Learned counsel for the respondents 1 and 2 next submitted that the Order under challenge is not a final order. It is an interlocutory order. In view of Sections 8 and 13 of the Act, the petitioner has the remedy of appeal under the Act. Consequently, petition under Article 227 of the Constitution of India is not to be entertained, in view of bar under Section 8 of the Act.

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[4] (1977) 4 SCC 551
[5] 2022 SCC OnLine SC 1775
[6] CRP.No.6475/2018, TGHC, Decided on 10.04.2019
[7] 2021 SCC OnLine Del 3946

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19. Learned counsel for the respondents also filed written synopsis, mentioning the following judgments:

1) ***M/s. Ventex Homes Pvt. Ltd. v. The District Registrar (Registration and Stamps)***[8]
2) ***M/s. Pechitti Ramakrishna v. Nekkanti Venkata Manohara Rao*** (2 supra)
3) ***Telangana Spinning and Weaving Mills Limited v. District Registrar***[9]
4) ***K. Sudhakar Reddy v. Sudha Constructions*** (3 supra)
5) ***Ramesh Kumar Puri v. Dugar Marketing Pvt.Ltd.***[10]
6) ***Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd.*** (7 supra)

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

V. Points for determination:

21. The following points arise for our consideration and determination:

A. Whether the order impugned is an interlocutory or final order?

B. Whether the petitioner has any remedy under the Commercial Courts Act against the impugned order?

C. Whether the petition under Article 227 of the Constitution of India is maintainable and entertainable?

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[8] 2004 CJ (AP) 1112
[9] 2007 (5) ALD 618
[10] CM(M)2030/2023 & CM Appl.63774/2023
Delhi HC, decided on 11.12.2023

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D. Whether the impugned order is legal and justified or it calls for any interference by this Court?

VI. Analysis:

Points 'A' & 'B':

22. Both the points being interconnected are taken together.

23. Sections 8 of the Commercial Courts Act, 2015 reads as under:

> "Section 8: **Bar against revision application or petition against an interlocutory order:**
>
> Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against **any interlocutory order of a Commercial Court**, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

24. Section 8 of the Commercial Courts Act, 2015 provides that notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court. So, Section 8 bars civil revision application or petition against any interlocutory order, which also includes an order on the issue of jurisdiction. It provides for the challenge to be made in an appeal against the decree of the Commercial Court but subject to the provisions of Section 13 of the Act.

25. Sections 13 of the Commercial Courts Act,2015 read as under:

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Section 13: **Appeals from decrees of Commercial Courts and Commercial Divisions.**

(1) [Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

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

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

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

26. Section 13 of the Commercial Courts Act, 2015 provides that any person aggrieved by the judgment or order of the Commercial Court below the level of District Judge may appeal to the Commercial Appellate Court, but where the judgment or order is of a Commercial Court at the level of the District Judge, exercising original civil jurisdiction or of Commercial Division of a High Court, he may appeal to the Commercial Appellate Division of that High Court. So, the judgment or order both have been made appealable under Section 13 (1) and 13 (1A). However, the proviso to sub-section (1) of Section 13, provides that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure (in short 'CPC'), as amended by the

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Commercial Courts Act and Section 37 of the Arbitration and Conciliation Act, 1996. Sub-Section (2) of Section 13 of the Commercial Courts Act, 2015 further provides that notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Act.

27. Section 13 of the Commercial Courts Act, which provides for appeals, uses two expressions, judgment or order. The proviso is confined to 'orders' When we read Section 8 along with Section 13, we find that Section 8 uses the expression 'interlocutory order'. Section 13 (1), (1A) or proviso to Sub-Section (1) or even Sub-Section (2) does not use expression 'interlocutory order'. The expression used therein is the 'order'. Section 8 which uses the expression 'interlocutory order' and bars the remedy of revision, makes the same subject to Section 13. So, in our view, the expression 'order' in Section 13 would include the 'interlocutory order' as also the 'final order', which is other than the 'judgment' or 'decree'. So, the order may be interlocutory order, or it may be final order, in the sense, not deciding the commercial dispute vide judgment or decree, but maintaining its character as 'order', such order if covered under any of the clauses (a) to (w) of Order 43 CPC, would be appealable under Section 13 (1) read with its proviso. In other words, if the order is interlocutory, then the remedy of appeal would be there, but subject to the proviso to Section 13 (1A). When it comes to the final order, the remedy would again be of the appeal, but subject to the same proviso. In our view, for the purposes of Order

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XLIII Rule 1 CPC and the appeal against such order under sub-section (1) of Section 13 of the Commercial Courts Act, the distinction between interlocutory or final order loses importance.

28. The combined effect of these sections, in our view, is that the remedy of revision is barred under Section 8 against the interlocutory order, other than the order covered under Order XLIII Rule 1 CPC. Such an interlocutory order not covered under Order 43 CPC, would also not be appealable. However, the challenge to such an interlocutory order, can be made at the time the appeal is filed against the judgment and decree passed by the Commercial Court i.e., against the final judgment, if it goes against the applicant, then while challenging the final judgment / decree in appeal under Section 13, the challenge to such an interlocutory order, as may not be appealable order under Order XLIII in view of sub-section (1) of Section 13, can be made.

29. In ***Kandla Export Corpn. V. OCI Corpn.***[11] the Hon'ble Apex Court held that Section 13 (1) of the Commercial Courts Act, is in two parts. The main provision is a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. It was observed that the proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Civil Procedure Code, 1908 and Section 37 of the Arbitration

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[11] (2018) 14 SCC 715

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Act. The Hon'ble Apex Court held that it will be noticed that orders that are not specifically enumerated under Order 43 CPC would, not be appealable.

30. Paragraphs – 13 and 14 of ***Kandla Export Corpn.*** (supra) are reproduced as under:

> "**13.** Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in *CIT* v. *Indo-Mercantile Bank Ltd.* [*CIT* v. *Indo-Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : AIR 1959 SC 713] , thus : (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)
>
> "*9.* … The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.
>
> '*8.* … it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.'
>
> Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in *Abdul Jabar Butt* v. *State of J&K* [*Abdul Jabar Butt* v. *State of J&K*, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404] , SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in *Ram Narain Sons Ltd.* v. *CST* [*Ram Narain Sons Ltd.* v. *CST*, (1955) 2 SCR 483 : AIR 1955 SC 765] , said : (SCR p. 493 : AIR p. 769, para 10)
>
> '*10.* It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main

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provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'

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

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

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Toronto Corpn.* v. *Attorney-General of Canada* [*Toronto Corpn.* v. *Attorney-General of Canada*, 1946 AC 32 (PC)] , AC p. 37.)"

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

31. Order XLIII CPC provides for the appeals from orders of specified nature as mentioned therein in clauses (a) to (w). It reads as under:

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<u>"ORDER XLIII – Appeals from Orders</u>

Rule 1: Appeals from orders—

An appeal shall lie from the following orders under the provisions of Section 104, namely:—

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

(*c*) an order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(*d*) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;

(*f*) an order under Rule 21 of Order XI;

(*i*) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(*j*) an order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;

(*ja*) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of Rule 105 of that Order is appealable;

(*k*) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(*l*) an order under Rule 10 of Order XXII giving or refusing to give leave;

(*n*) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(*na*) an order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;

(*p*) orders in interpleader-suit under Rule 3, Rule 4 or Rule 6 of Order XXXV;

(*q*) an order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;

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

(*s*) an order under Rule 1 or Rule 4 of Order XL;

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> (*t*) an order of refusal under Rule 19 of Order XLI to readmit, or under Rule 21 of Order XLI to rehear, an appeal;
> (*u*) an order under Rule 23 or Rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
> (*w*) an order under Rule 4 of Order XLVII granting an application for review."

32. The Commercial Courts Act, pursuant to Section 16, has amended some provisions of CPC, which amended provisions, as specified in the Schedule to the Commercial Courts Act, shall apply to suits in respect of a commercial dispute of a specified value in the Commercial Courts. Section 16 (3) specifically provides that in case of conflict, the provisions of Code of Civil Procedure as amended by Section 16 of Commercial Courts Act shall prevail.

33. Section 16 however does not make any amendment to Order XLIII CPC. It is so clear from perusal of the Schedule.

34. In the present case, the nature of the order is that the petitioner's application under Order 13 Rules 3 and 4 of CPC has been decided. Perusal of Order XLIII Rule 1 CPC shows that an order of the nature passed under Order 13 Rules 3 & 4 CPC is not mentioned therein. In other words, such an order is not appealable under Order XLIII. Once it is not appealable under Order XLIII CPC it will also not be appealable under Section 13 of the Commercial Courts Act.

35. Now we proceed to consider the nature of the order passed and impugned in this civil revision petition, whether 'interlocutory' so as to attract the bar of Section 8 of Commercial Courts Act to maintainability of revision.

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36. Learned counsel for the petitioner submitted that the Order impugned is final and not interlocutory as it finally decided the petitioner's application under Order XIII Rules 3 & 4 CPC and on that aspect of admissibility of Ex.P1 finality is attached by the impugned order.

37. Learned counsel for the respondents submitted that the "Interlocutory Application", is defined in Civil Rules of Practice and Circular Orders, Chapter-I Rule 2 (j) is as under:

> "Rule 2 (j) - Interlocutory application" means an application to the court in any suit, appeal or proceedings already instituted in such court, other than a proceeding for execution of a decree or order."

38. Based on the aforesaid definition, learned counsel for the respondents submitted that the petition I.A.No.356 of 2023, filed under Order XIII, Rules (3) & (4) of CPC is an interlocutory application within the meaning of Rule 2 (j) of Civil Rules of Practice and the order passed thereon would be an interlocutory order.

39. In ***Madhu Limaye*** (supra), the question was with respect to maintainability of the revision application under Section 397 (1) of Code of Criminal Procedure (in short 'Cr.P.C'), in view of Sub-Section (2) of Section 397 Cr.P.C. which barred revision against an interlocutory order. The question was also if the revision was barred by sub-section (2) of Section 397 Cr.P.C the same also operated as a bar in entertaining the petition under Section 482 Cr.P.C. In that context, the Hon'ble Apex Court considered interlocutory order and final order, as also the intermediate order. The Hon'ble Apex Court

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considered ***Amar Nath v. State of Haryana***[12] as also ***Mohan Lal Mangan Lal Thacker v. State of Gujarat***[13]. The Hon'ble Apex Court held as under in para-12:

> "**12.** Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". In volume 22 of the third edition of *Halsbury's Laws of England* at p. 742, however, it has been stated in para 1606:
>
> "... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required."
>
> In para 1607 it is said:
>
> "In general a judgment or order which determines the principal matter in question is termed 'final'."
>
> In para 1608 at pp. 744 and 745 we find the words:
>
> "An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

40. In ***Madhu Limaye*** (supra), the Hon'ble Apex Court further observed that the bar of revision against the interlocutory order under Sub-Section (2) of Section 397 Cr.P.C operated in the exercise of the revisional power of the High Court. But if an interlocutory order brought about a situation which was an

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[12] (1977) 4 SCC 137
[13] AIR 1968 SC 733

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abuse of the process of the Court or for the purpose of securing the ends of justice, interference by the High Court was absolutely necessary, then nothing contained in Sub-Section (2) of Section 397 Cr.P.C could limit or affect the exercise of the inherent power by the High Court, though it was further observed that the High Court must exercise the inherent power very sparingly.

41. In ***State v. N.M.T. Joy Immaculate***[14] in the context of Section 397 Code of Criminal Procedure, the Hon'ble Apex Court observed, referring to the meaning given in some of the dictionaries that, ordinarily and generally, the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. The Hon'ble Apex Court referred to the judgment of the Privy Council in ***S. Kuppuswami Rao v. R***[15] and observed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. The Hon'ble Apex Court further observed that however, in ***Madhu Limaye*** (supra), such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order was not accepted. The Hon'ble Apex Court further referred the case of ***K. K. Patel v. State of Gujarat***[16] that if the objections raised by the accused were upheld, the entire prosecution proceedings would have been terminated, the order was therefore not an interlocutory order, and consequently, it was revisable under Section 397

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[14] (2004) 5 SCC 729
[15] AIR 1949 PC 1
[16] (2000) 6 SCC 195

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Cr.P.C. In ***N.M.T.Joy Immaculate*** (supra), the Hon'ble Apex Court held that if an order of remand was found to be illegal, it could not result in acquittal of the accused or in termination of proceedings. A remand order could not affect the progress of the trial or its decision in any manner. The said order was therefore a pure and simple interlocutory order.

42. Paragraphs – 8, 9, 10 and 11 of ***N. M. T. Joy Immaculate*** (supra) are reproduced as under:

> "**8.** ….. The expression "interlocutory order" has not been defined in the Code. It will, therefore, be useful to refer to its meaning as given in some of the dictionaries:
>
> *The New Lexicon Webster's Dictionary*
>
> "Pronounced and arising during legal procedure, not final."
>
> *Webster's Third New International Dictionary*
>
> "not final or definitive: made or done during the progress of an action".
>
> *Wharton's Law Lexicon*
>
> "An interlocutory order or judgment is one made or given during the progress of action, but which does not finally dispose of the rights of the parties e.g. an order appointing a receiver or granting an injunction, and a motion for such an order is termed an interlocutory motion."
>
> *Black's Law Dictionary*
>
> "Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy."
>
> **9.** Ordinarily and generally, the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". In Vol. 26 of *Halsbury's Laws of England* (4th Edn.) it has been stated as under in para 504:

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"[A] judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. It is impossible to lay down principles about what is final and what is interlocutory. It is better to look at the nature of the application and not at the nature of the order eventually made. In general, orders in the nature of summary judgment where there has been no trial of the issues are interlocutory."

9.1. In para 505 it is said that in general a judgment or order which determines the principal matter in question is termed "final".

9.2. In para 506 it is stated as under:

"An order which does not deal with the final rights of the parties, but either (*1*) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (*2*) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'.

An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

10. In *S. Kuppuswami Rao* v. *R.* [AIR 1949 FC 1 : 49 Cri LJ 625] the following principle laid down in *Salaman* v. *Warner* [(1891) 1 QB 734 : 60 LJQB 624 (CA)] was quoted with approval: (AIR p. 3, para 6)

"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

10.1. The test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined.

11. However, in *Madhu Limaye* v. *State of Maharashtra* [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order was not accepted as this will render the revisional power conferred by Section 397(1) nugatory. After taking into consideration the

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scheme of the Code of Criminal Procedure and the object of conferring a power of revision on the Court of Session and the High Court, it was observed as follows: (SCC p. 558, para 13)

"In such a situation it appears to us that the real intention of the legislature was not to equate the expression 'interlocutory order' as invariably being converse of the words 'final order'. There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami case* [AIR 1949 FC 1 : 49 Cri LJ 625] but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders."

43. In ***Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.***[17] the Hon'ble Apex Court observed that whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is that if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

44. Paragraph – 10 of ***Bhaskar Industries Ltd.*** (supra) is reproduced as under:

"**10.** The above position was reiterated in *Rajendra Kumar Sitaram Pande* v. *Uttam* [(1999) 3 SCC 134 : 1999 SCC (Cri) 393] . Again in *K.K. Patel* v. *State of Gujarat* [(2000) 6 SCC 195 : 2001 SCC (Cri) 200] this Court stated thus: (SCC p. 201, para 11)

[17] (2001) 7 SCC 401

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> "**It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage** (vide *Amar Nath* v. *State of Haryana* [(1977) 4 SCC 137 : 1977 SCC (Cri) 585] , *Madhu Limaye* v. *State of Maharashtra* [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] , *V.C. Shukla* v. *State through CBI* [1980 Supp SCC 92 : 1980 SCC (Cri) 695 : AIR 1980 SC 962] and *Rajendra Kumar Sitaram Pande* v. *Uttam* [(1999) 3 SCC 134 : 1999 SCC (Cri) 393]). **The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings,** if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

45. We may now refer to ***Shah Babulal Khimji v. Jayaben D. Kania***[18] in which the Hon'ble Apex Court observed that as a judgment constitutes the reasons for the decree it follows, as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. It cannot be said that any order passed by a Trial Judge would amount to a judgment. The word 'judgment' as defined in Code of Civil Procedure (CPC) has undoubtedly a concept of finality in a broader and not a narrower sense. The Hon'ble Apex Court observed that a judgment can be of three kinds, viz., a final judgment, a preliminary judgment and intermediary or interlocutory judgment.

46. It is apt to reproduce para-113 of ***Shah Babulal Khimji*** (supra) as under:

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[18] (1981) 4 SCC 8

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"**113.** Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word "judgment" as used in clause 15 of the letters patent because the letters patent has advisedly not used the terms "order" or "decree" anywhere. The intention, therefore, of the givers of the letters patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the letters patent. It seems to us that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

(1) *A final judgment.*— A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the letters patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) *A preliminary judgment.*—This kind of a judgment may take two forms—(*a*) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (*b*)

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Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, *res judicata*, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore,be construed to be a judgment so as to be appealable to a larger Bench.

(3) ***Intermediary or interlocutory judgment.*** **— Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (*a*) to (*w*) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the letters patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.** For instance, where the trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order **vitally affects a valuable right of the defendant** it will undoubtedly be treated as a judgment within the meaning of the letters patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the **plaintiff is adversely** affected but the **damage or prejudice caused to him** is not direct or

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> immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge **would not amount to a judgment** within the meaning of clause 15 of the letters patent **but will be purely an interlocutory order.** Similarly, suppose the trial Judge passes an order setting aside an ex parte decree against the defendant, **which is not appealable under any of the clauses of Order 43 Rule 1** though an order rejecting an application to set aside the decree passed ex parte falls within Order 43 Rule 1 clause (*d*) and is appealable, the **serious question that arises is** whether or not the order first mentioned is a judgment within the meaning of letters patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench."

47. In ***Shah Babulal Khimji*** (supra), the Hon'ble Apex Court held that most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1. Further, there may also be interlocutory orders which are not covered by Order 43 Rule 1, but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment, the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.

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48. The Hon'ble Apex Court was considering the meaning of the 'judgment' in relation to Letters Patent Appeal, but the law which has been laid down on 'interlocutory order' having quality of 'finality' would equally apply, to determine if the order is purely interlocutory as opposed to an interlocutory order having quality of finality. It was held that an order which vitally effect the valuable right will undoubtedly be treated as a interlocutory judgment. The Hon'ble Apex Court further observed and held that in the course of trial, the Trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other. Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. The Hon'ble Apex Court also observed that the orders passed by the Trial Judge deciding question of admissibility or relevancy of a document could not be treated as judgments because the grievance on that score could be corrected by the appellate Court in appeal against the final judgment. The Hon'ble Apex Court, in para-120, gave illustrations of interlocutory orders which might be treated as judgments.

49. Paragraphs – 114, 115, 116 and 120 of ***Shah Babulal Khimji*** (supra) are reproduced as under:

"**114.** In the course of the trial, the trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some

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inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the trial Judge.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. **Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.**

116. We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the letters patent. Suppose the trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory, it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the letters patent. This is what was held by this Court in *Shanti Kumar case* [(1974) 2 SCC 387 : AIR 1974 SC 1719 : (1975) 1 SCR 550] , as discussed above."

"**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

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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."

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

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'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.

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***

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(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 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).

53. It is the own case of the petitioner that Ex.P1 was exhibited. Any objection was not raised by the petitioner under some belief that such marking was tentative in the injunction petition only. He applied the document to be de-exhibited. The ground taken is that it was not properly stamped as per Article 6 (B). Consequently, the matter pertains to in substance that, the document exhibited as Ex.P1 is not admissible in evidence for want of proper stamp duty. The Special Judge held that Article 6 (B) is not applicable and Article 6 (C) is applicable and before de-exhibiting, the opportunity is required to be given to the plaintiff/respondent to make payment of deficit stamp duty in terms of Article 6 (C). Consequently, we are of the view that the impugned order is with respect to the admissibility of document Ex.P1.

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54. In view of ***Shah Babulal Khimji*** (supra) that the orders passed by the trial Judge deciding the question of admissibility or relevancy of a document also cannot be treated as judgment/final order, because grievance on this score can be corrected by the appellate Court in appeal against final judgment.

55. For all the aforesaid reasons, we are of the considered view that the order impugned is not final order. It is an interlocutory order within the meaning of Section 8 of Commercial Courts Act. The revision against that order is barred by Section 8 of the Commercial Courts Act. But, the same is challengeable before appellate Court in appeal against the final judgment/decree.

56. The submission advanced by the learned counsel for the respondents that the order is interlocutory as it was passed on an interlocutory application is not acceptable to us. That is not the true test to determine the nature of the order, whether interlocutory or not. 'Interlocutory Application' as defined in Civil Rules of Practice and Circular Orders Rule 2 (j) only defines the 'interlocutory applications'. But, the order passed on such interlocutory application would necessarily not be an interlocutory order. We have already taken the view that the impugned order is interlocutory for the reasons recorded.

Point 'C':

57. We shall now consider the point of maintainability and entertainability of the petition under Article 227 of the Constitution of India. We would first consider some precedents.

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58. In ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[19] 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 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.

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[19] (2010) 8 SCC 329

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(*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

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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.

59. In ***Garment Craft v. Prakash Chand Goel***[20] the Hon'ble Apex Court observed that the High Court exercising supervisory jurisdiction does not act as a Court of first appeal to reappreciate, reweigh the evidence or facts. The 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

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[20] (2022) 4 SCC 181

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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. Such discretionary relief must be exercised to ensure there is no miscarriage of justice.

60. Paragraphs – 15 and 16 of ***Garment Craft*** (supra) are reproduced as under:

> "**15.** Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel* v. *Garment Craft*, 2019 SCC OnLine Del 11943] 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. [*Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] 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.
>
> **16.** Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber* v. *Dass Estate (P) Ltd.* [*Estralla Rubber* v. *Dass Estate (P) Ltd.*, (2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)

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> "*6.* The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

61. In ***State of M.P. v. R.D.Sharma***[21] also 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.

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[21] (2022) 13 SCC 320

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62. In ***K. P. Natarajan v. Muthalammal***[22] the Hon'ble Apex Court held that it is well settled that the powers of the High Court under Article 227 of the Constitution of India are in addition to and wider than the powers under Section 115 of the Code. The case of ***Surya Dev Rai v. Ram Chander Rai***[23] and ***Radhey Shyam v. Chhabi Nath***[24] were also referred and it was observed that even while overruling ***Surya Dev Rai*** (supra) on the question of jurisdiction under Article 226, in ***Radhey Shyam*** (supra) it was pointed out the jurisdiction under Article 227 is distinguishable.

63. Paragraph – 21 of ***K. P. Natarajan*** (supra) is reproduced 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 ex parte 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* [*Surya Dev Rai* v. *Ram Chander Rai*, (2003) 6 SCC 675] , 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 insofar 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* [*Radhey Shyam* v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] , the three-member Bench, even while overruling *Surya Dev Rai* [*Surya Dev Rai* v. *Ram Chander Rai*, (2003) 6 SCC 675] 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

[22] (2021) 15 SCC 817
[23] (2003) 6 SCC 675
[24] (2015) 5 SCC 423

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an error of jurisdiction in invoking Article 227 and setting aside the ex parte decree.

64. In ***Raj Shri Agarwal @ Ram Shri Agarwal*** (supra), where the High Court had dismissed the petition under Article 227 of the Constitution of India, observing that the same was not maintainable, as remedy by way of revision under Section 115 CPC was available, the Hon'ble Supreme Court held that, in catena of decisions, the Hon'ble Apex court had taken the view that where there was availability of remedy under Section 115 CPC, normally, "the petition under Article 227 of the Constitution of India would not lie", that did not mean that petition under Article 227 of the Constitution of India, shall not be maintainable. There is a difference and distinction between the entertainability and maintainability. The remedy available under Article 227 of the Constitution of India is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the opinion that the aggrieved party has another efficacious remedy available under CPC. However, to say that the petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable.

65. In ***M. V. Ramana Rao*** (supra), on a preliminary objection raised, about the maintainability of the civil revision petition under Article 227 of the Constitution of India, in view of Section 8 of the Commercial Courts Act, the High Court for the State of Telangana at Hyderabad, observed and held that, what is barred by Section 8 of the Commercial Courts Act, 2015 is only a

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revision under Section 115 of CPC. The power of judicial review available under Articles 226/227 of the Constitution of India cannot be and has not been taken away by Section 8 of the Commercial Courts Act, 2015.

66. Paragraphs-17 and 18 of ***M. V. Ramana Rao*** (supra) are reproduced as under:

> "17. What is barred by Section 8 of the Commercial Courts Act, 2015 is only a revision under Section 115 of CPC. The power of judicial review available under Articles 226/227 of the Constitution of India cannot be and has not been taken away by Section 8 of the Commercial Courts Act, 2015.
>
> 18. This is not to say that Article 227 can be used as a ruse to circumvent Section 8 of the Commercial Courts Act, 2015. Wherever Article 227 is sought to be used as a ruse, the Commercial Appellate Division will necessarily have to call the bluff. There are self-imposed restrictions for exercising the power under Article 227 which we shall always keep in mind. It may be open always to the respondent in a revision under Article 227 to contend that the case on hand would not qualify to be entertained within the parameters of Article 227. But, it cannot be contended that Section 8 is an absolute bar even for the maintainability of a revision under Article 227. This issue is also settled by a decision of another bench of this Court in **M/s. Harpreet Singh Chhabra v. Mrs. Suneet Kaur Sahney** {2019 (2) ALD 62 (DB)}. Therefore, we reject the contention regarding maintainability and hold that the revision is maintainable."

67. At this stage we may profitably refer to the judgment of the High Court of Gujarat at Ahmedabad in ***State of Gujarat v. Union of India***[25] on the same point, in which the conclusions in nutshell were summed up in para-41 as under:

[25] 2018 SCC OnLine Guj 1515

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

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

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

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

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

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

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

(c) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably

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possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

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

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

(4) In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases, itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

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

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

68. In ***Black Diamond Trackparts Pvt.Ltd.*** (supra), on the question of maintainability of the petition under Article 227 of the Constitution of India with respect to the proceedings in commercial suit in view of Section 8 of the Commercial Courts Act, 2015, it was held that the petition under Article 227 of the Constitution of India was maintainable. The jurisdiction and power of the High Court was not affected in any manner by Section 8 of the Commercial Courts Act. The word ‘petition’ in Section 8 has not been made with reference to a petition under Article 227, which is with reference to a revision application/revision petition only.

69. It is apt to refer paragraph - 12 of ***Black Diamond Trackparts Pvt.Ltd.*** (supra) as under:

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> **"12.** Thus, the question no. (i) aforesaid is answered by holding that the petition under Article 227 of the Constitution of India to the High Court with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court has not been and could not have been affected in any manner whatsoever by Section 8 of the Commercial Courts Act. The use of the word "petition" in Section 8 is not and could not have been with reference to a petition under Article 227 of the Constitution and is with reference to a revision application/revision petition only."

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.

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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/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*

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which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge".

73. We entertain the petition and proceed to consider the merits of the impugned order, whether legal or otherwise, but keeping in view the scope of interference under Article 227 of the Constitution of India.

Point 'D':

74. We shall reproduce Article 6 of Schedule 1A of the Indian Stamp Act which provides as under:

"SCHEDULE1-A STAMP DUTY ON CERTAIN INSTRUMENTS UNDER THE STAMP (ANDHRA PRADESH AMENDMENT) ACT, 1922

6		AGREEMENT OF MEMORANDUM OF AN AGREEMENT:- not other wise provided for	
	(A)	Where the value	
	i)	Does not exceed Rs. 5,000/-	Ten Rupees
	ii)	Exceeds Rs. 5,000/- but does not exceed Rs. 20,000/-	Twenty Rupees
	iii)	Exceeds Rs. 20,000/- but does not exceed Rs. 50,000/-	Fifty Rupees
	iv)	Exceeds Rs. 50,000/-	One hundred rupees
	(B)	**If relating to construction of a house or building including a multi-unit house or building or unit of apartment / flat/ portion of multi-stored building or for development / sale of any other immovable property.**	Five rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction / development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department Authorities whichever is higher.
	(C)	In any other Case One hundred rupees	

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75. There is no dispute between the parties that the agreement Ex.P1 is an agreement with respect to agricultural land and for lay out. The parties are also not at issue that Ex.P1 is not for construction of building etc., but the agreement is only for lay out. The submission of the learned counsel for the petitioner is that Article 6 (B) of Schedule 1A provides "*If relating to construction of a house or building including a multi-unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property*". So, the agreement Ex.P1 relates for development of any other immovable property i.e., agricultural land, and consequently, is covered under Article 6 (B). He emphasized that 'any other immovable property' would include the agricultural land. The agreement being for development for lay out, it would be covered under Article 6 (B). The submission of the learned counsel for the respondents is that the development of 'any other immovable property' would not include development of the agricultural land for lay out. He submitted that the expression 'any other immovable property' is to be considered analogous to the words previously used. In his submission, 'any other immovable property' would mean, of the nature of house or building, multi-unit house or building or apartment/flat or portion of a multi-storied building, but it would not include the agricultural land.

76. We are of the view that such issue is squarely covered by the judgments in the case of ***Saranam Peda Appaiah*** (supra) and in ***M/s. Pechitti Ramakrishna*** (supra).

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77. In ***Saranam Peda Appaiah*** (supra), where also the question for consideration was with regard to the interpretation under Article 6 (B) Schedule-1A of the Stamp Act, as amended by Act No. 21 of 1995, and where also the agreement was for sale of agricultural land, the contention raised by the petitioner therein was that all the transactions relating to sale of any other immovable property would be covered under Article 6 (B), whereas the contention raised by the respondents' counsel therein was that it did not apply in case of transactions relating to the agricultural lands, a coordinate Bench of this Court held that, Article 6 (B) is very clear in its expression i.e., "in case of any transactions relating to construction of a house etc., as mentioned in descriptive column of the instrument". Applying the cardinal principle of the interpretation, it was held that, the provision when interpreted with reference to the words contained in the provisions and by interpretative process, it was neither to be expanded nor restricted. The coordinate Bench observed that when the Legislature specifically referred to the document relating to construction of house, apartment, flat, portion of multi-storied building etc., and the stamp duty payable on the market value or the estimated cost of the said property, it had to be confined only to houses, multi unit houses or apartment etc. It was also held that the transactions left over under Article 6 (B) were covered by Article 6 (C). Finally, it was held that the agricultural lands were not covered under Section 6 (B), which covered specific items of property. It could not have universal application to all transactions covering immovable

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properties. The suit agreement of sale of agricultural land could not be said to be covered under Article 6 (B) of Schedule-1A of the Act.

78. Paragraph-19 of ***Saranam Peda Appaiah*** (supra) is reproduced as under:

> "**19.** Article 6 (B) is very clear in its expression that in case of any transactions relating to construction of a house etc. as mentioned in descriptive column of the instrument, the stamp duty required is Rs. 5/- for every hundred or part thereof, of the market value or the estimated cost of proposed construction or development of such property as the case may be. **Therefore, the question that calls for consideration is whether the said Article covers the agricultural land also**. It is a cardinal principle of the interpretation that the provision interpreted with reference to the words contained in the provisions and by interpretative process, it is neither to be expanded nor constricted. **When the Legislature has specifically referred to the document relating to construction of house, apartment, flat, portion of multi- storied building etc and the stamp duty is payable on the market value or the estimated cost of the said property, it has to be confined only to houses, multi unit bouses or apartment etc.** Even the valuation was sought to be arrived at on the basis of the rates prescribed by the Public Works Department authorities. Further it is noticed that the transactions left over by Article 6(B) are covered by Article 6(C). Therefore, it cannot also be said that there was vacuum in the Article. **In the instant case, the agreement is after 1.4.1995, but it relates to the agricultural land. Taking the clue from the last expression in the document namely "sale of any other immovable property" it was contended that it would embrace in its fold other immovable property including the agricultural property and therefore, the stamp duty has to be paid on that basis. But, that contention cannot be accepted, inasmuch as the expression the sale of any other immovable property has to be interpreted keeping in view the principles of *ejusdam generis* namely where general words fallow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent,**

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but are to be held as applying only to persons or things of the same general kind or classes as specifically mentioned. Otherwise, the other provisions become otiose. An identical issue came up before the Id. Brother P.S. Narayana J in ***Pechitti Ramakrishna* v. *Nekkanti Venkata Manohara Rao* (4)** 2004 (1) A.L.D. 557 and after referring to the amendments has observed as follows:

"A careful reading of Article 6(B) of Schedule 1 -A of the Act goes to show that it is applicable if the agreement relates to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi- storied building or for development/sale of. any other immovable property. A further reading of the stamp duty payable specified in column No. 2 also makes it clear that this provision was introduced in relation to the construction agreements or agreements of the like nature. No doubt, emphasis was laid on the language "sale of any other immovable property". **These, words "sale of any other immovable property" in Article 6 (B) of Schedule 1-A of the Act may have to be read along with the rest of the provision and also with column No. 2.** As far as any other case specified in Article 6(C) of Schedule 1-A of the Act is concerned, it should be construed to be a case not falling under either A or B of Schedule 1-A of the Act. It is needless to say that Article 6(A) of Schedule l-A of the Act is a general provision. It is no doubt true that in the present case, the sale consideration recited in the agreement of sale is Rs. 42,500/- and it is in relation to the sale of a vacant site. On a careful reading of the language employed in Article 6(A, B & C) of Schedule l-A of the Act and also the stamp duty payable specified in column No. 2 and taking into consideration the object of introducing B by A.P. Act 21 of 1995. I am of the considered opinion that Article 6(B) of Schedule l-A of the Act would be applicable only in such specified cases and the same cannot override the general provision of Article 6(A) of Schedule 1-A of the Act and agreement in question would definitely fall under the general provision of Article 6 (A) (iii) of Schedule 1-A of the Act and hence, the stamp duty already paid is sufficient. It is also clarified that in the light of the nature of the document Article 6(B) of Schedule 1-A of the Act is not applicable to the present case. Hence, the impugned Order holding that the stamp duty and penalty relating to the document in question is liable to be paid under Article 6(B) of Schedule 1-A of the Act cannot be sustained."

Therefore, we are in agreement with the principle laid down in the aforesaid decision. The provision has to be interpreted harmoniously keeping in view the objects of the amendment. More over, the present amendment is fiscal in nature and it has to be construed strictly in accordance with law. **In as much as the agricultural lands are not covered and it covered only specific items of property, it cannot have universal application of all transactions covering immovable properties. Under those circumstances, the suit Agreement of Sale cannot be said to be covered by Article 6(B) of the Schedule 1-A of the**

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> **Act** and hence we are of the considered view that the Order of the lower Court is in consonance with the Article 6(B) of the Stamp Act as amended by A.P. Act 21 of 1995.

79. The coordinate Bench of this Court in ***Saranam Peda Appaiah*** (supra) also considered the judgment in ***M/s.Pechitti Ramakrishna*** (supra) of this Court by the learned single Judge.

80. Any argument to persuade us to be not in agreement with the view taken by the Coordinate Bench or to have a different view, has not been raised. We are in agreement with the view taken by the Coordinate Bench.

81. In ***K. Sudhaker Reddy*** (supra), upon which reliance has been placed by the learned counsel for the respondents, Article 6 (B), was held not applicable to the agreements for developments as therein, observing that the said agreement was not for any of the purposes mentioned in Article 6 (B).

82. We are also of the view that if the document does not pertain to the purposes mentioned under Article 6 (B), Article 6 (B) would not be applicable.

83. ***Telangana Spinning and Weaving Mills Limited*** (supra), upon which reliance was placed by the learned counsel for the respondents, in our view, is on a different point and not on the point in issue. In that case, the amount paid on Development Agreement-cum-GPA at the rate of 1% cost of the construction, subject to the maximum of Rs.50,000/-, required to be adjusted or not in the sale deeds that might be executed at a later point of time was the question, which is not in the present case.

84. We do not find any illegality in the order of the Special Court to the extent of challenge. The view taken by the Special Court has the support of

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law i.e., in ***Saranam Peda Appaiah*** (supra). In the exercise of supervisory jurisdiction under Article 227 of the Constitution of India, it is not a fit case for interference. Thus, holding the petition under Article 227 to be maintainable and also entertaining it, we do not find it a fit case to interfere in the exercise of jurisdiction under Article 227 of the Constitution of India.

VII <u>Result:</u>

85. The Civil Revision Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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RAVI NATH TILHARI, J

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NYAPATHY VIJAY, J

Date: 11.09.2024
Dsr

Note:
LR copy to be marked
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