REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2548 OF 2009

RADHEY SHYAM & ANR. ...APPELLANTS

VERSUS

CHHABI NATH & ORS. ...RESPONDENTS

WITH

SLP (C) NO.25828 OF 2013

JAGDISH PRASAD ...PETITIONER

VERSUS

IQBAL KAUR & ORS. ...RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL J.

1. This matter has been placed before the Bench of three Judges in pursuance of an order dated April 15, 2009 passed by the bench of two Hon'ble Judges to consider the correctness of the law laid down by this Court in ***Surya Dev Rai*** vs***. Ram Chander Rai and others***[1] that an order of civil court was amenable to writ jurisdiction under Article

1 2003 (6) SCC 675

226 of the Constitution. The reference order, *inter alia*, reads:-

> *30. .....Therefore, this Court unfortunately is in disagreement with the view which has been expressed in **Surya Dev Rai** insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.*
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> ***31.** Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.*
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> ***32.** The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in **Surya Dev Rai** and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in **Surya Dev Rai** that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in **Surya Dev Rai**, is contrary to the ratio in **Mirajkar** and the ratio in **Mirajkar** has not been overruled in **Rupa Ashok Hurra** [2002 (4) SCC 388].*
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> ***33.** In view of our difference of opinion with the views expressed in **Surya Dev Rai**, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in **Surya Dev Rai** on the question discussed above."*

2. Since this Bench has to decide the referred question, it is not necessary to mention the facts of the case in detail. Suffice it to say that assailing an interim order of civil court in a pending suit, the defendant-respondent filed a writ

petition before the Allahabad High Court and the High Court having vacated the said interim order granted in favour of the plaintiff-appellant, the appellant moved this Court by way of a special leave petition, *inter alia*, contending that the writ petition under Article 226 was not maintainable against the order of the civil court and, thus, the impugned order could not be passed by the High Court. On behalf of the respondent, reliance was placed on the decision of this Court in ***Surya Dev Rai*** laying down that a writ petition under Article 226 was maintainable against the order of the civil court and thus it was submitted that the High Court was justified in passing the impugned order.

3. As already mentioned, the Bench of two Hon'ble Judges who heard the matter was not persuaded to follow the law laid down in ***Surya Dev Rai***. It was observed that the judgment in ***Surya Dev Rai*** did not correctly appreciate the ratio in the earlier Nine Judge judgment of this Court in ***Naresh Shridhar Mirajkar and others*** vs. ***State of Maharashtra***[2] wherein this Court came to the conclusion that "*Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction (para 63)*". With reference to the observations in ***Surya Dev Rai*** for

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2 AIR 1967 SC 1 = 1966 (3) SCR 744

not following the conclusion in ***Mirajkar***, the referring Bench inter alia observed:

> ***"25.*** *In our view the appreciation of the ratio in* ***Mirajkar*** *by the learned Judges, in* ***Surya Dev Rai****, with great respect, was possibly a little erroneous and with that we cannot agree.*
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> ***26.*** *The two-Judge Bench in* ***Surya Dev Rai*** *did not, as obviously it could not overrule the ratio in* ***Mirajka****r, a Constitution Bench decision of a nine-Judge Bench. But the learned Judges justified their different view in* ***Surya Dev Rai****, inter alia on the ground that the law relating to certiorari changed both in England and in India. In support of that opinion, the learned Judges held that the statement of law in Halsbury, on which the ratio in* ***Mirajkar*** *is based, has been changed and in support of that quoted paras 103 and 109 from Halsbury's Laws of England, 4th Edn. (Reissue), Vol. 1(1). Those paras are set out below:*
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> > *"103. The prerogative remedies of certiorari, prohibition and mandamus: historical development.—Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs;...*
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> > * * *
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> > *109. The nature of certiorari and prohibition.—Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and*

> *directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."*

The aforesaid paragraphs are based on general principles which are older than the time when ***Mirajkar*** *was decided are still good. Those principles nowhere indicate that judgments of an inferior civil court of plenary jurisdiction are amenable to correction by a writ of certiorari. In any event, change of law in England cannot dilute the binding nature of the ratio in* ***Mirajkar*** *and which has not been overruled and is holding the field for decades.*

27. *It is clear from the law laid down in* ***Mirajkar*** *in para 63 that a distinction has been made between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or court which are not civil courts and which cannot pass judicial orders. Therefore, judicial orders passed by civil courts of plenary jurisdiction stand on a different footing in view of the law pronounced in para 63 in* ***Mirajkar****. The passage in the subsequent edition of Halsbury (4th Edn.) which has been quoted in* ***Surya Dev Rai*** *does not show at all that there has been any change in law on the points in issue pointed out above.*

28. *The learned Judges in* ***Surya Dev Rai*** *stated in SCC para 18, p. 687 of the Report that the decision rendered in* ***Mirajkar*** *was considered by the Constitution Bench in* ***Rupa Ashok Hurra v. Ashok Hurra*** *and wherein the learned Judges took a different view and in support of that, the following para from* ***Rupa Ashok Hurra*** *has been quoted:* ***(Surya Dev Rai*** *case, SCC pp. 687-88, para 18)*

> *"(i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for*

> *passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme."*

> ***29.*** *We are constrained to point out again that in* ***Rupa Ashok Hurra*** *the Constitution Bench did not take any view which is contrary to the views expressed in* ***Mirajkar****. On the other hand, the ratio in* ***Mirajkar*** *was referred to with respect and was relied on in* ***Rupa Ashok Hurra****.* ***Mirajkar*** *was referred to in SCC para 8, p. 399 and again in SCC para 11 on p. 402 and again in SCC para 59, p. 418 and also in SCC para 60, p. 419 of* ***Rupa Ashok Hurra****. Nowhere even any whisper of a divergence from the ratio in* ***Mirajkar*** *was expressed. Rather passages from* ***Mirajkar*** *have been quoted with approval.*

> ***30.*** *In fact the question which was referred to the Constitution Bench in* ***Rupa Ashok Hurra*** *is quoted in para 1 of the judgment and it is clear from the perusal of the said paragraph that the question for consideration in* ***Rupa Ashok Hurra*** *was totally different. Therefore, this Court unfortunately is in disagreement with the view which has been expressed in* ***Surya Dev Rai*** *insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned."*

4. Thus, the question to be decided is whether the view taken in ***Surya Dev Rai*** that a writ lies under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view.

5. We have heard learned counsel for the parties. We have also heard learned counsel for the petitioner in SLP (C) No.25828 of 2013 as the said SLP was tagged to the present appeal and also the intervenor in person in I.A. No.2 of 2011.

6. Learned counsel for the appellant submitted that the view taken in the referring order deserves to be approved for the reasons given in the said order and contrary view in ***Surya Dev Rai*** may be overruled. It is submitted that the bench of nine Judges in ***Mirajkar*** has categorically held that the order of the civil court was not amenable to writ jurisdiction under Article 226 and the said view still holds the field. The reasons for not following the said view in ***Surya Dev Rai*** are not sound in law. This submission is supported by learned counsel for the petitioner appearing in SLP (Civil) No.25828 of 2013 as also by the Intervenor in person.

7. On the contrary, learned senior counsel for the respondent supported the view taken in ***Surya Dev Rai*** which is based on decisions of this Court relied upon therein. According to him, the scope of writ jurisdiction was wide enough to extend to an order of the civil court. There

was no reason to exclude the civil courts from the expression "*any person or authority*" in Article 226 of the Constitution. Conceptually, a writ of certiorari could be issued by a superior court to an inferior court. He also pointed out that though the judgment in ***Surya Dev Rai*** is by a Bench of two judges, the same has been referred with approval in larger bench judgments in ***Shail*** vs. ***Manoj Kumar***[3]***, Mahendra Saree Emporium (II)*** vs. ***G.V. Srinivasa Murthy***[4] and ***Salem Advocate Bar Assn(II)*** vs***. Union of India***[5] and on that ground correctness of the said view is not open to be considered by this Bench.

8. We have given anxious consideration to the rival submissions.

9. It will be appropriate to refer to some of the leading judgments of this Court on the scope of writ jurisdiction in the present context, including those referred to in ***Surya Dev Rai*** and the referring order.

10. In ***T.C. Basappa*** vs. ***T. Nagappa***[6], question before this Court was as to the scope of jurisdiction under Article 226 in dealing with a writ of certiorari against the order of the Election Tribunal. This Court considered the question in

3 2004 (4) SCC 785
4 2005 (1) SCC 481
5 2005 (6) SCC 344
6 AIR 1954 SC 440= (1955) 1 SCR 250

the background of principles followed by superior courts in England which generally formed the basis of decisions of Indian Courts. This Court held that while broad and fundamental norms regulating exercise of writ jurisdiction had to be kept in mind, it was not necessary for Indian Courts to look back to the early history or procedural technicalities of the writ jurisdiction in England in view of express constitutional provisions. Certiorari was meant to supervise "judicial acts" which included quasi judicial functions of administrative bodies. The Court issuing such writ quashed patently erroneous and without jurisdiction order but the Court did not review the evidence as an appellate court nor substituted its own finding for that of the inferior Tribunal. Since the said judgment is followed in all leading judgments, relevant observations therein may be extracted :

> ***"5.*** *The principles upon which the superior courts in England interfere by issuing writs of certiorari are fairly well known and they have generally formed the basis of decisions in our Indian courts. It is true that there is lack of uniformity even in the pronouncements of English Judges, with regard to the grounds upon which a writ, or, as it is now said, an order of certiorari, could issue, but such differences of opinion are unavoidable in Judge-made law which has developed through a long course of years. As is well known, the issue of the prerogative writs, within which certiorari is included, had their origin in England in the King's prerogative power of superintendence*

over the due observance of law by his officials and tribunals. The writ of certiorari is so named because in its original form it required that the King should be "certified of" the proceedings to be investigated and the object was to secure by the authority of a superior court, that the jurisdiction of the inferior Tribunal should be properly exercised [Vide Ryots of Garabandho v. Zamindar of Parlakimedi 70IA 129. These principles were transplanted to other parts of the King's dominions. In India, during the British days, the three chartered High Courts of Calcutta, Bombay and Madras were alone competent to issue writs and that too within specified limits and the power was not exercisable by the other High Courts at all. "In that situation" as this court observed in Election Commission, India v. Saka Venkata Subba Rao [(1953) SCR 1144]

> *"the makers of the Constitution having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England."*

6. *The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of*

habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

7. *One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in Rex v. Electricity Commissioners (1924) 1 KB 171]:*

> *"Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."*

The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably

erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person [Vide Per Lord Cairns in walshall's Overseers vs. London and North Western Railway Co. 4 AC 30, 39].

8. *The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Summer in King v. Nat Bell Liquors Limited [(1922) 2 AC 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.*

9. *Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances [Vide Halsbury, 2 Edn. Vol IX]. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess [Vide Banbury vs. Fuller, 9 Exch 111; R. v. Income Tax Special Purposes Commissioners, 21 QBD 313].*

10. *A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on*

clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal [(1952) 1 KB 338]. The Lord Justice says:

> *"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."*

11. *In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms [Vide Veerappa Pillai v. Raman & Raman Ltd. (1952) SCR 583] and said:*

> *"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."*

These passages indicate with sufficient fullness the general principles that govern the exercise

of jurisdiction in the matter of granting writs of certiorari under Article 226 of the Constitution".

11. It is necessary to clarify that expression "judicial acts" is not meant to refer to judicial orders of civil courts as the matter before this Court arose out of the order of Election Tribunal and no direct decision of this Court, except ***Surya Devi Rai,*** has been brought to our notice where writ of certiorari may have been issued against an order of a judicial court. In fact, when the question as to scope of jurisdiction arose in subsequent decisions, it was clarified that orders of judicial courts stood on different footing from the quasi judicial orders of authorities or Tribunals.

12. In ***Ujjam Bai*** vs***. State of U.P.***[nd], matter was referred to a Bench of seven Judges on the scope of writ of certiorari against an order of assessment under the provisions of Sales Tax law passed in violation of a fundamental right. Majority of six judges took the view that except an order under a void law or an *'ultra vires'* or *'without jurisdiction'* order, there could be no violation of fundamental right by a quasi judicial order or a statutory authority and such order could not be challenged under Article 32. A writ of certiorari could however, lie against a patently erroneous order under

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nd AIR 1962 SC 1621 = (1963) 1 SCR 778

Article 226. It was observed that judicial orders of Courts stood on different footing. Ayyangar, J. observed :

> *"Before concluding it is necessary to advert to one matter which was just touched on in the course of the arguments as one which might be reserved for consideration when it actually arose, and this related to the question whether the decision or order of a regular ordinary Court of law as distinguished from a tribunal or quasi-judicial authority constituted or created under particular statutes could be complained of as violating a fundamental right. It is a salutary principle that this Court should not pronounce on points which are not involved in the questions raised before it and that is the reason why I am not dealing with it in any fullness and am certainly not expressing any decided opinion on it. Without doing either however, I consider it proper to make these observations. There is not any substantial identity between a Court of law adjudicating on the rights of parties in the lis before it and designed as the High Courts and this Court are to investigate inter alia whether any fundamental rights are infringed and vested with power to protect them, and quasi-judicial authorities which are created under particular statutes and with a view to implement and administer their provisions. I shall be content to leave the topic at this."*

13. In ***Mirajkar,*** a nine Judge Bench judgment, a judicial order of High Court was challenged as being violative of fundamental right. This Court by majority held that a judicial order of a competent court could not violate a fundamental right. Even if there was incidental violation, it could not be held to be violative of fundamental right. Gajendragaddkar, CJ, observed :

*"**37.** .....The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1).*

***38.** ..... Just as an order passed by the court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court, so could the impugned order be challenged in appeal under Article 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties, or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Article 19(1), must fail.*

> ***41.*** *It is true that the opinion thus expressed by Kania, C.J., in the case of A.K Gopalan [1950 SCR 88] had not received the concurrence of the other learned Judges who heard the said case. Subsequently, however, in Ram Singh v. State of Delhi [1951 SCR 451], the said observations were cited with approval by the Full Court. The same principle has been accepted by this Court in Express Newspapers (Private) Ltd., v. Union of India [1959 SCR 12], and by the majority judgment in Atiabari Tea Co., Ltd. v. State of Assam [1961 (1) SCR 809."*

Explaining observations in earlier judgments in ***Budhan Choudhary*** vs***. State of Bihar***[7] and ***Parbhani Tranport Coop. Society Ltd.*** vs. ***Regional Transport Authority***[8] that a judicial order could be violative of Article 14, it was observed :

> ***"45.*** *Naturally, the principal contention which was urged on their behalf before this Court was that Section 30 CrPC, infringed the fundamental right guaranteed by Article 14, and was, therefore, invalid. This contention was repelled by this Court. Then, alternatively, the appellants argued that though the section itself may not be discriminatory, it may lend itself to abuse bringing about a discrimination between persons accused of offences of the same kind, for the police may send up a person accused of an offence under Section 366 to a Section 30 Magistrate and the police may send another person accused of an offence under the same section to a Magistrate who can commit the accused to the Court of Session. This alternative contention was examined and it was also rejected. That incidentally raised the question as to whether the judicial decision could itself be said to offend Article 14. S.R. Das, J., as he then was, who spoke for the Court considered this contention, referred with approval to the*

7 AIR 1955 SC 191 = (1955) 1 SCR 1045
8 AIR (1960) SC 801 = (1960) 3 SCR 177

observations made by Frankfurter, J., and Stone, C.J., of the Supreme Court of the United States in Snowden v. Hughes [(1944) 321 US1] and observed that the judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. Having made this observation which at best may be said to assume that a judicial decision may conceivably contravene Article 14, the learned Judge took the precaution of adding that the discretion of judicial officers is not arbitrary and the law provides for revision by superior courts of orders passed by the subordinate Courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals.

46. *It is thus clear that though the observations made by Frankfurter, J. and Stone, C.J. in Snowden v. Hughes had been cited with approval, the question as to whether a judicial order can attract the jurisdiction of this Court under Article 32(1) and (2) was not argued and did not fall to be considered at all. That question became only incidentally relevant in deciding whether the validity of the conviction which was impugned by the appellants in the case of Budhan Choudhry could be successfully assailed on the ground that the judicial decision under Section 30 CrPC, was capriciously rendered against the appellants. The scope of the jurisdiction of this Court in exercising its writ jurisdiction in relation to orders passed by the High Court was not and could not have been examined, because the matter had come to this Court in appeal under Article 132(1); and whether or not judicial decision can be said to affect any fundamental right merely because it incidentally and indirectly may encroach upon such right, did not therefore call for consideration or decision in that case. In fact, the closing observations made in the judgment themselves indicate that this Court was of the view that if any judicial order was sought to be attacked on the ground that it was inconsistent*

with Article 14, the proper remedy to challenge such an order would be an appeal or revision as may be provided by law. We are, therefore, not prepared to accept Mr Setalvad's assumption that the observations on which he bases himself support the proposition that according to this Court, judicial decisions rendered by courts of competent jurisdiction in or in relation to matters brought before them can be assailed on the ground that they violate Article 14. It may incidentally be pointed out that the decision of the Supreme Court of the United States in Snowden v. Hughes was itself not concerned with the validity of any judicial decision at all.

47. *On the other hand, in Parbhani Transport Cooperative Society Ltd. v. Regional Transport Authority, Aurangabad Sarkar, J. speaking for the Court, has observed that the decision of the Regional Transport Authority which was challenged before the Court may have been right or wrong, but that they were unable to see how that decision could offend Article 14 or any other fundamental right of the petitioner. The learned Judge further observed that the Regional Transport Authority was acting as a quasi-judicial body and if it has made any mistake in its decision there are appropriate remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Article 14. It is true that in this case also the larger issue as to whether the orders passed by quasi judicial tribunals can be said to affect Article 14, does not appear to have been fully argued. It is clear that the observations made by this Court in this case unambiguously indicate that it would be inappropriate to suggest that the decision rendered by a judicial tribunal can be described as offending Article 14 at all. It may be a right or wrong decision, and if it is a wrong decision it can be corrected by appeal or revision as may be permitted by law, but it cannot be said per se to contravene Article 14. It is significant that these observations have been made while dealing with a writ petition filed by the petitioner, the Parbhani Transport Cooperative Society Ltd. under Article 32; and insofar as the point has been considered and decided the decision is against Mr Setalvad's contention."*

Decision of this Court in ***Prem Chand Garg*** vs. ***Excise Commnr***[9], setting aside rule of this Court requiring deposit of security for filing a writ petition, was also explained as not holding that a judicial order resulted in violation of fundamental right :

> ***"49.*** *It would thus be seen that the main controversy in the case of Prem Chand Garg centered round the question as to whether Article 145 conferred powers on this Court to make Rules, though they may be inconsistent with the constitutional provisions prescribed by Part III . Once it was held that the powers under Article 142 had to be read subject not only to the fundamental rights, but to other binding statutory provisions, it became clear that the Rule which authorised the making of the impugned order was invalid. It was in that context that the validity of the order had to be incidentally examined. The petition was made not to challenge the order as such, but to challenge the validity of the Rule under which the order was made. Once the Rule was struck down as being invalid, the order passed under the said Rule had to be vacated. It is difficult to see how this decision can be pressed into service by Mr Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself. What was held by this Court was that Rule made by it under its powers conferred by Article 145 which are legislative in character, was invalid; but that is quite another matter.*
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> ***50.*** *It is plain that if a party desires to challenge any of the Rules framed by this Court in exercise of its powers under Article 145 on the ground that they are invalid, because they illegally contravene his fundamental rights, it would be open to the party to move this Court under Article 32. Such a challenge is not against any decision of this Court, but against a Rule made by it in pursuance of its rule-making power. If the Rule is struck down as it*

9 AIR 1963 SC 996 = (1963) Supp. 1 SCR 885

> *was in the case of Prem Chand Garg, this Court can review or recall its order passed under the said Rule. Cases in which initial orders of security passed by the Court are later reviewed and the amount of security initially directed is reduced, frequently arise in this Court; but they show the exercise of this Court's powers under Article 137 and not under Article 32. Therefore, we are not satisfied that Mr Setalvad is fortified by any judicial decision of this Court in raising the contention that a judicial order passed by the High Court in or in relation to proceedings brought before it for its adjudication, can become the subject-matter of writ jurisdiction of this Court under Article 32(2). In fact, no precedent has been cited before us which would support Mr Setalvad's claim that a judicial order of the kind with which we are concerned in the present proceedings has ever been attempted to be challenged or has been set aside under Article 32 of the Constitution."*

This Court then dealt with the legal position in England on the question of scope of writ of certiorari against a judicial order. Noting that writ of certiorari did not lie against a judicial order, it was observed :

> ***"62.*** *Whilst we are dealing with this aspect of the matter, we may incidentally refer to the relevant observations made by Halsbury on this point. "In the case of judgments of inferior courts of civil jurisdiction," says Halsbury in the footnote, "it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p. 887], inasmuch as an error did not lie upon that ground.* ***But there appears to be no reported case in which the judgment of an inferior court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground [Halsbury Laws of England Vol.I 1, p.129]". The ultimate proposition is set out in the terms: "Certiorari does not lie to quash the judgments of inferior courts of civil***

jurisdiction." These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari.

63. *In Rex. v. Chancellor of St. Edmundsburry and Ipswich Diocese Ex parte White [(1945) 1 KBD 195] the question which arose was whether certiorari would lie from the Court of King's Bench to an ecclesiastical Court; and the answer rendered by the court was that certiorari would not lie against the decision of an ecclesiastical court. In dealing with this question, Wrottesley, L.J. has elaborately considered the history of the writ jurisdiction and has dealt with the question about the meaning of the word 'inferior' as applied to courts of law in England in discussing the problem as to the issue of the writ in regard to decisions of certain courts. "The more this matter was investigated," says Wrottesley, L.J., "the clearer it became that the word "inferior" as applied to courts of law in England had been used with at least two very different meanings. If, as some assert, the question of inferiority is determined by ascertaining whether the court in question can be stopped from exceeding its jurisdiction by a writ of prohibition issuing from the King's Bench, then not only the ecclesiastical courts, but also palatine courts and admiralty courts are inferior courts. But there is another test, well recognised by lawyers, by which to distinguish a superior from an inferior court, namely, whether in its proceedings, and in particular in its judgments, it must appear that the court was acting within its jurisdiction. This is the characteristic of an inferior court, whereas in the proceedings of a superior court it will be presumed that it acted within its jurisdiction unless the contrary should appear either on the face of the proceedings or aliunde." Mr Sen relied upon this decision to show that even the High Court of Bombay can be said to be an inferior court for the purpose of exercising jurisdiction by this Court under Article 32(2) to issue a writ of certiorari in respect of the impugned order passed by it. We are unable to*

> *see how this decision can support Mr Sen's contentions."*
>
> (emphasis added).

14. In ***Rupa Ashok Hurra (supra)*** it was held that final order of this Court cannot be challenged under Article 32 as violative of fundamental right. Judgment of this Court in ***Triveniben*** vs. ***State of Gujarat***[10] was referred to with approval to the effect that a judicial order could not violate a fundamental right. It was observed :

> *"**11.** In **Triveniben v. State of Gujarat** speaking for himself and other three learned Judges of the Constitution Bench, Oza, J., reiterating the same principle, observed: (SCC p. 697, para 22)*
>
> > *"It is well settled now that a judgment of court can never be challenged under Articles 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in **Naresh Shridhar Mirajkar v. State of Maharashtra** and also in **A.R. Antulay v. R.S. Nayak** [1988 (2) SCC 602], the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the*

10 (1989) 1 SCC 678

final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper."

12. *We consider it inappropriate to burden this judgment with discussion of the decisions in other cases taking the same view. Suffice it to mention that various Benches of this Court reiterated the same principle in the following cases:* ***A.R. Antulay v. R.S. Nayak, Krishna Swami v. Union of India*** *[1992 (4) SCC 605],* ***Mohd. Aslam v. Union of India*** *[1996 (2) SCC 749],* ***Khoday Distilleries Ltd. v. Registrar General, Supreme Court of India*** *[1996 (3) SCC 114],* ***Gurbachan Singh v. Union of India*** *[1996 (3) SCC 117],* ***Babu Singh Bains v. Union of India*** *[1996 (6) SCC 565] and* ***P. Ashokan v. Union of India*** *[1998 (3) SCC 56.*

13. *It is, however, true that in Supreme Court Bar Assn. v. Union of India [1998 (4) SCC 409 a Constitution Bench and in* ***M.S. Ahlawat v. State of Haryana*** *[2000 (1) SCC 278] a three-Judge Bench, and in other cases different Benches quashed the earlier judgments/orders of this Court in an application filed under Article 32 of the Constitution. But in those cases no one joined issue with regard to the maintainability of the writ petition under Article 32 of the Constitution. Therefore, those cases cannot be read as authority for the proposition that a writ of certiorari under Article 32 would lie to challenge an earlier final judgment of this Court.*

14. *On the analysis of the ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person, whether he was a party to the case or not.*

> ***15.*** *In fairness to the learned counsel for the parties, we record that all of them at the close of the hearing of these cases conceded that the jurisdiction of this Court under Article 32 of the Constitution cannot be invoked to challenge the validity of a final judgment/order passed by this Court after exhausting the remedy of review under Article 137 of the Constitution read with Order XL Rule 1 of the Supreme Court Rules, 1966."*

15. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Article 226 and 32.

16. Another Bench of three judges in ***Sadhana Lodh*** vs. ***National Insurance Co. Ltd.***[11] considered the question whether remedy of writ will be available when remedy of appeal was on limited grounds. This Court held :

> ***"6.*** *The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd. v. Nicolletta Rohtagi (2002 (7) SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to*

11 2003 (3) SCC 524

> *file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure.* ***Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution."*** (emphasis added)

17. This Court in judgment dated 6 December, 1989 in Civil Appeal No.815 of 1989 ***Qamruddin*** vs***. Rasul Baksh & Anr.*** which has been quoted in Allahabad High Court Judgment in ***Ganga Saran*** vs. ***Civil Judge***th considered the issue of writ of certiorari and mandamus against interim order of civil court and held :

th AIR 1991 All 114

> *"If the order of injunction is passed by a competent court having jurisdiction in the matter, it is not permissible for the High Court under Article 226 of the Constitution to quash the same by issuing a writ of certiorari. In the instant case the learned Single Judge of the High Court further failed to realise that a writ of mandamus could not be issued in this case. A writ of mandamus cannot be issued to a private individual unless he is under a statutory duty to perform a public duty. The dispute involved in the instant case was entirely between two private parties, which could not be a subject matter of writ of mandamus under Article 226 of the Constitution. The learned Single Judge ignored this basic principle of writ jurisdiction conferred on the High Court under Article 226 of the Constitution. There was no occasion or justification for issue of a writ of certiorari or mandamus. The High Court committed serious error of jurisdiction in interfering with the order of the District Judge."*

18. Thus, it has been clearly laid down by this Court that an Order of civil court could be challenged under Article 227 and not under Article 226.

19. We may now come to the judgment in ***Surya Dev Rai.*** Therein, the appellant was aggrieved by denial of interim injunction in a pending suit and preferred a writ petition in the High court stating that after CPC amendment by Act 46 of 1999 w.e.f. 1 July, 2002, remedy of revision under Section 115 was no longer available. The High Court dismissed the petition following its Full Bench Judgment in ***Ganga Saran*** to the effect that a writ was not maintainable

as no mandamus could issue to a private person. The Bench considered the question of the impact of CPC amendment on power and jurisdiction of the High Court to entertain a writ of certiorari under Article 226 or a petition under Article 227 to involve power of superintendence. The Bench noted the legal position that after CPC amendment revisional jurisdiction of the High Court against interlocutory order was curtailed. The Bench then referred to the history of writ of certiorari and its scope and concluded thus :

> ***"18.*** *Naresh Shridhar Mirajkar case was cited before the Constitution Bench in Rupa Ashok Hurra case and considered. It has been clearly held: (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.*
>
> ***19.*** *Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.*
>
> ***xxxx***
>
> ***24.*** *The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai [1986 Supp. SCC 401]. Proceedings under Article 226*

are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet 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. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. *Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the*

> *proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.*

20. It is the above holding, correctness of which was doubted in the referring order already mentioned above.

21. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all other courts having limited jurisdiction subject to supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against

patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

22. The Bench in ***Surya Dev Rai*** also observed in para 25 of its judgment that distinction between Articles 226 and 227stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction

under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including ***Waryam Singh and another*** vs. ***Amarnath and another***[st]***,*** ***Ouseph Mathai*** vs. ***M. Abdul Khadir***[12]***,*** ***Shalini Shyam Shetty*** vs. ***Rajendra Shankar Patil***[13] ***and Sameer Suresh Gupta*** vs. ***Rahul Kumar Agarwal***[14]***.*** In ***Shalini Shyam Shetty,*** this Court observed :

> ***"64.*** *However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.*
>
> ***65.*** *We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.*
>
> ***66.*** *We may also observe that in some High Courts there is a tendency of entertaining*

st AIR 1954 SC 215=1954 SCR 565
12 2002 (1) SCC 319
13 2010 (8) SCC 329
14 2013 (9) SCC 374

> *petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed.* ***In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence.*** *It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.*
>
> ***67.*** *As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."*
>
> (emphasis added)

23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

24. We may also deal with the submission made on behalf of the respondent that the view in ***Surya Dev Rai*** stands approved by larger Benches in ***Shail, Mahendra Saree Emporium and Salem Advocate Bar Assn*** and on that ground correctness of the said view cannot be gone into by this Bench. In ***Shail***, though reference has been made to ***Surya Dev Rai***, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In ***Mahendra Saree Emporium,*** reference to ***Surya Dev Rai*** is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in ***Salem Bar Assn.*** in para 40, reference to ***Surya Dev Rai*** is for the same purpose. We are, thus, unable to accept the submission of learned counsel for the respondent.

25. Accordingly, we answer the question referred as follows :

> *"(i) Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;*
>
> *(ii) Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.*

*Contrary view in **Surya Dev Rai** is overruled."*

26. The matters may now be listed before the appropriate Bench for further orders.

.....CJI.
[H.L. DATTU]

.....J.
[A.K. SIKRI]

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
FEBRUARY 26, 2015