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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.237 of 2026

In the matter of an Appeal under Article 4 of
the Orissa High Court Rules, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III of the High Court of Orissa Rules, 1948

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M/s.NKC Projects Pvt. Ltd., **Appellant**
Haryana

-Versus-

Chief Engineer (Roads-1), **Respondent**
Bhubaneswar

Advocates appeared in this case:

For Appellant : Mr. Sidhant Dwibedi,
Advocate
For Respondent : Mr. Debashis Tripathy,
Additional Government
Advocate

CORAM:
HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

J U D G M E N T



Date of hearing and judgment: 10th March, 2026

HARISH TANDON, C.J.-

1. This intra-Court appeal arises out of order dated 9th January, 2026 passed by a learned Single Judge of this Court in W.P.(C) No.34461 of 2025.
2. An interesting point emerged in the instant writ appeal, arising from an order dated 9th January, 2026 passed by the Single Bench, whereby and whereunder the order passed by the Commercial Court in an execution proceeding was *set aside*, as to whether the said order is amenable to be challenged by invoking the jurisdiction exercised by the High Court under Article 226 of the Constitution of India.
3. The prelude to the litigations can be traced that upon a dispute having arisen between the parties in relation to a contract, the special fora relating to an arbitration was invoked and the Arbitral Tribunal entered into a reference and invited the parties to exchange their pleadings. After the full-fledged trial, the said arbitral proceeding culminated into an arbitral award against the State of Odisha which remained unchallenged as



either no application under Section 36 of the Arbitration and Conciliation Act, 1996 was filed or the same having filed, stood dismissed. The moment the award remained unchallenged or unsuccessfully challenged, it is amenable to be put into execution as a decree of a Civil Court which in fact has been resorted to by the appellant in approaching the Commercial Court as the subject-matter of dispute comes within the ambit of the definition of “commercial dispute” enshrined in Section 2 (c) of the Commercial Courts Act, 2015.

4. It is undisputed that the notices were served upon the Judgment Debtor/Respondent and appearance was secured before the Executing Court through a pleader but the record would reveal that frequent adjournments were sought in order to avoid the execution of money decree. Time and again, the Executing Court reminded the Judgment Debtor of their solemn duty, liability and the responsibility to implement the said decree, but there appears to be a lackadaisical attitude on the part of the said Judgment Debtor in defraying the execution of a decree which tantamount to denial of usufruct, which the Decree Holder is entitled to. An application was taken out by the



appellant-Decree Holder as to why the Judgment Debtor shall not be put into a civil prison having not only defied the money decree but also the conduct would percolate a sense that they are not interested to honor the said decree passed against the said Judgment Debtor. The said application was taken up on 17th October, 2025 in presence of the Judgment Debtor and the record would reveal that an adjournment was sought by the Judgment Debtor on the said date but the pleader did not appear at the time when the matter was called on by the learned Judge. As a fait accompli the time petition got dismissed and a show cause was directed to be issued upon the Judgment Debtor as to why he may not be put into a civil prison. On the next date, the usual methodology was adopted by the Judgment Debtor in filing the adjournment petition which was again rejected by the Court and subsequently an order detaining the Judgment Debtor/Respondent into civil prison was passed.

5. Astonishingly the respondent approached this Court under Articles 226 and 227 of the Constitution of India which is categorized as the writ petition and listed before the Bench having a Roster to take up the writ petition of such nature. By



the impugned order, the writ petition is allowed setting aside the order of the Commercial Court in the following:

“8. In such view of the matter, this Court is of the view that the Petitioner should have been issued proper notice before passing of such coercive order. However, the learned Commercial Court has passed an order by committing the present Petitioner to civil prison. Accordingly, the orders dated 01.11.2025 and 11.11.2025 passed by the learned Senior Civil Judge (Commercial Court), Bhubaneswar in Execution Petition No.292 of 2024 are quashed. However, the Petitioner is directed to deposit the entire award amount before the executing court i.e. learned Senior Civil Judge (Commercial Court), Bhubaneswar within two months from today. It is further directed that ARBP No.76 of 2024 filed by the Government before the learned Senior Civil Judge (Commercial Court), Bhubaneswar shall be disposed of within a period of three months from the date of presentation of a certified copy of this order. Till the ARBP No.76 of 2024 is disposed of, the award amount to be deposited by the Petitioner shall not be released in favour of the Opposite Party.

9. It is made clear that if the Petitioner fails to deposit the awarded amount within the time



stipulated hereinabove, the executing court shall free to proceed in accordance with law.

10. Accordingly, the Writ Petition is disposed of”

6. The above quoted order is assailed in the instant appeal and a plea is taken whether the writ petition under Article 226 of the Constitution of India is maintainable against the judicial order passed by the Commercial Court. There has been a divergence of views with regard to the exercise of jurisdiction by the High Court under Articles 226 and 227 of the Constitution of India. Both the provisions are integral part of the basic structure which can neither be whittled down nor be taken away through a legislative fiat. Though such power is immuned from being curtailed and/or abridged even by promulgating the legislation, yet there has been a constant debate on the scope and jurisdiction conferred upon the High Court to be exercised in a specified field. Without advertent to go to the earlier judgments touching upon the said issues and keeping in mind that both the provisions conferred power upon the High Court to do a thing, the reference can be made to a two-Judge Bench decision of the



Apex Court rendered in the case of *Surya Dev Rai v. Ram Chander Rai and others* reported in AIR 2003 SC 3044.

7. The identical issue was raised when the interlocutory order passed in a Civil Suit by the Civil Court was assailed under Section 115 of the Code of Civil Procedure, 1908 and thereafter the order disposing of the said revision application was challenged under Article 226 of the Constitution of India before the High Court. After the matter travelled from the High Court to the Apex Court, the solitary point which was urged before the Supreme Court was as to whether Article 226 of the Constitution of India can be exercised by the High Court against an order passed in a civil proceeding by a Civil Court. Although the Apex Court held that in upholding the powers to be exercised by the High Court under the certiorari jurisdiction, such powers should be exercised only in the event of failure of justice or existence of a patent error manifest from the record and above all to keep the Courts within the precincts of law. So far as the supervisory jurisdiction exercised by the High Court under Article 227 is concerned, the Apex Court in unequivocal terms held that such power is exercised to keep the Tribunal and



Court subordinate to it within the peripheral of law and any transgression therefrom would entail such orders susceptible to be interfered with. Ultimately, it was held that there is no absolute embargo created under Article 226 of the Constitution of India, more particularly, the certiorari jurisdiction over the judicial order (s) and in a given situation the Court may interfere with the judicial orders provided the case comes within the ambit of the situations adumbrated in the case of *Surya Dev Rai* (*supra*). The relevant portion of the said judgment reads thus:

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in,



and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a 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.



(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless 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.

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

(7) 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 abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is



yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the 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.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set



aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. 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.”

8. Subsequently, another two-Judge Bench of the Apex Court in *Radhey Shyam and another Vs Chhabi Nath and others*, doubted the correctness of the ratio laid down in *Surya Dev Rai (supra)* and being a co-equal strength Bench, referred the matter to the Hon'ble Chief Justice of India to constitute a larger Bench. The three-Judge Bench of the Apex Court in *Radhey Shyam and another vs. Chhabi Nath and others* reported in AIR 2015 SC 3269, answered the reference and held in unequivocal term that the writ petition under Article 226 of the Constitution of India is not entertainable against a judicial order. To be more precise, it is held that the judicial orders are not susceptible to be challenged for a writ of certiorari provided under Article 226 of



the Constitution of India, and, thereby overruled such observation of the *Surya Dev Rai (supra)* where it is held that the writ of certiorari is maintainable against a judicial order. The observations made in paragraphs, 23, 24 and 25 of *Radhey Shyam (supra)* are quoted hereunder :

“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 [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] 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 v. Ram Chander Rai, (2003) 6 SCC 675 stands approved by larger Benches in Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401, Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC 481 and Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 and on that ground correctness of the said view cannot be gone into by this Bench. In Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401, though



reference has been made to Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675, 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 (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC 481, reference to Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 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 Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 in para 40, reference to Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.

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

“(i) Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.”

(ii) Jurisdiction under Article 227 is distinct from jurisdiction under Article 226. Contrary view in Surya Dev Rai is overruled.”



9. Even a Division Bench of this Court in *Harish Karan @ Harish Chandra Karan & others vs. Haripada Karan & Another* (Writ Appeal No.960 of 2022 decided on 02.05.2023) after taking note of the Full Bench decision of this Court in *Mohammed Saud vs. Dr. (Maj) Shaikh Mahfooz; 2008 (II) OLR (FB) 725*, which was affirmed by the Apex Court in *Mohammed Saud vs. Dr.(Maj) Shaikh Mahfooz; (2010) 13 SCC 517*, held that the writ appeal against the judicial order is not maintainable.

10. Though the said case is referred by the counsel for the appellant, we do not find any applicability thereof in the present fact scenario. That was a case where a writ appeal was filed against an order passed by the Single Bench exercising jurisdiction under Article 227 of the Constitution of India and by virtue of an embargo having created under the letters patent, such appeal is not maintainable. We are concerned with the issue whether the writ of certiorari is the appropriate remedy against the judicial order passed in a civil proceeding. If the writ of *certiorari* is maintainable, then by virtue of the provisions contained under the letters patent, it is maintainable before the Division Bench.



11. Be that as it may, the judgment rendered in *Radhey Shyam (supra)* has created an embargo in entertaining an application under Article 226 of the Constitution of India, more particularly, the writ of *certiorari* against the judicial order passed by the Court in a civil proceeding, and, therefore, the writ in the nature of *certiorari* is not an appropriate remedy for an aggrieved person.

12. It leads to another aspect as to whether power of superintendence has also been taken away in relation to a judicial order passed in a civil proceeding; the answer is negatived. The power of superintendence encapsulated within its fold to keep the Court and the tribunals subordinate to it within its territories to travel within the circumference of law and in the event, it is found that the Court has transgressed such boundary, the High Court may pass an appropriate order which is just in tune with the settled legal provisions. There is no fetter either in *Surya Dev Rai (supra)* or *Radhey Shyam (supra)* created in entertaining an application under Article 227 of the Constitution of India against a judicial order passed in a civil proceeding, and, therefore, we have no



hesitation to hold that the application under Article 227 of the Constitution is maintainable in such situations.

13. A piquant situation has arisen when the application is captioned as an application under Articles 226 and 227 of the Constitution of India. Both the provisions have been resorted to, but the categorization of the case appears to have been done treating such application to have been filed under Article 226 of the Constitution of India and the learned Single Judge who passed the impugned order was conferred with the jurisdiction/determination to deal with such application(s). There is no incongruity on our part in proceeding on such basis that an application under Article 226 of the Constitution is entertained by the Single Bench against an order passed in execution of decree by the Commercial Court and being the judicial order, the writ of *certiorari* is not an appropriate remedy as the same is not maintainable in view of the law laid down in *Radhey Shyam (supra)*.

14. It admits no ambiguity in a settled proposition of law that an order passed by a forum, the Tribunal, Authority and the



Court having no jurisdiction, is a nullity and, therefore, shall not be permitted to occupy a space in the judicial parlance. Once the order is passed without any jurisdiction, such order needs to be effaced. It leads to another aspect which cannot be ignored that the power under Articles 226 and 227 of the Constitution of India is conferred upon the High Court, and therefore, if such order is passed, whether it would be termed as a nullity having passed without jurisdiction.

15. It is well settled that the Chief Justice is the master of the Roster. It segregates the category of cases to be dealt by each of the Hon'ble Judges of the High Court which *ipso facto* leads to an inescapable inference that category of cases which are not assigned to a particular Judge, cannot be taken up by the said Judge. Once the power under jurisdiction exercised by each of the Judges is assigned by the Chief Justice, usurpation of power *de hors* such category of cases would relate to an exercise of the jurisdiction without any authority, and, therefore, any order is passed by a Bench having not assigned the Roster/determination is *per se* illegal.



16. Though we do not find any infirmity in exercise of the jurisdiction as a plea of demur was not taken by the appellant nor do we find any reference thereof in the impugned order, once such plea is taken in the instant appeal as a plea of jurisdiction which strikes at the root of the exercise of power, we permit such point to be taken and decided in the instant writ appeal.

17. In view of the discussions made hereinabove, we hasten to say that the writ of *certiorari* under Article 226 of the Constitution is not maintainable against the judicial order passed in a civil proceeding, but equally the proceeding is maintainable under Article 227 of the Constitution of India.

18. Since the appellant has invited our attention to the merit of the impugned order, the impugned order is hereby *set aside*. The writ petition is revived. We, therefore, direct the Registry to assign the appropriate number as is assigned to an application under Article 227 of the Constitution of India. After undertaking such exercise, the instant petition shall be placed before a Bench having a Roster to take an application under Article 227 of the



Constitution of India. We expect and hope that the moment the matter is listed before the appropriate Bench having the requisite Roster, precedence shall be given to the instant matter in securing the disposal thereof.

19. The writ appeal stands disposed of accordingly.

(Harish Tandon)
Chief Justice

I

(M.S. Raman)
Judge

Bichi/Aswini