

\$~9(Appellate Side-2022 list)

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) 557/2021 & CM No. 28265/2021

SWATI GUPTA

..... Petitioner

Through: Mr.Aditya Aggarwal and  
Mr.Manas, Advs.

versus

USHA GUPTA & ANR.

..... Respondents

Through: Mr. Rishabh Gulati, Adv.  
Mr.Manish Kumar Srivastava and Mr.Akhil  
Hasija, Advs. for R-BSES Yamuna Power Ltd.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**ORDER**

**24.03.2022**

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1. On 22<sup>nd</sup> February, 2022, a Coordinate Bench of this Court had directed the petitioner to advance arguments on maintainability of this petition in view of the submission, of learned Counsel for the respondent, that an appeal lay, against the impugned order dated 28<sup>th</sup> August, 2019, before the Appellate Tribunal constituted under Section 15 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (“the Act” hereinafter).

2. Mr. Gulati, learned Counsel for the respondent has drawn my attention to an order dated 5<sup>th</sup> March, 2021 passed by a Coordinate Bench

of this Court in W P (C) 2895/2021 (*Rakhi Sharma v. State*), in which it has been held that the words “any person”, in Section 16 of the Act would encompass any person affected by the order of the Maintenance Tribunal, and would not be restricted to senior citizens or parents.

3. Irrespective of whether the impugned order is appealable or not, I am of the opinion that the present petition, under Article 227, is maintainable. Article 227, unlike Article 226, is not reflective of the extraordinary original jurisdiction of this Court. The Court under Article 227 exercises supervisory jurisdiction over judicial authorities lower in the hierarchy. It is well settled that Article 227 jurisdiction is neither by way of appeal nor even by way of judicial review, save and except to the extent of ascertaining whether the authorities lower in the judicial hierarchy are functioning within the legitimate bounds of their authority.

4. Such jurisdiction, being plenary in nature, cannot be altogether divested on the ground of alternate remedy, which may apply, in a given case, to exercise of extraordinary jurisdiction under Article 226 of the Constitution of India though, where the impugned order is passed by a Civil Court and the appeal lies to a Civil Court, an Article 227 Court may justifiably refrain from exercising jurisdiction. As an aside, it may be noted that, even under Article 226, the existence of an alternate remedy would not operate as an absolute bar to exercise jurisdiction, as has been held in *Whirlpool Corporation v. Registrar of Trademarks, Mumbai*<sup>1</sup>.

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<sup>1</sup> (1998) 8 SCC 1

5. Apropos alternative remedy as a bar to exercise of jurisdiction under Article 227 of the Constitution of India, Anoop V. Mohta, J (as he then was), sitting singly in the High Court of Bombay has held thus, in *Vishwanath Ramkrishna Patil v. Ashok Murlidhar Sonar*<sup>2</sup>:

“10. The Apex Court in *Shail (Smt.) v. Manoj Kumar and Ors.*<sup>3</sup> has expressed in reference to the power under Article 227 of the Constitution of India as under:

3. In *Surya Dev Rai v. Ram Chander Rai*<sup>4</sup> this Court has held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to 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 proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or tribunal should have made. The jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution, but is certainly one vesting in the High Court and meant to be exercised in appropriate cases.

It is difficult to curtail this remedy merely because there is a revisional remedy available. The alternate remedy is no bar to invoke power under Article 227. What is required as to see the facts and circumstances of the case while entertaining such petition under Article 227 of the Constitution and/or under Section 482 of Criminal Procedure Code. The view therefore, as taken in both the cases V.K. Jain and Saket Gore, no way expressed total bar. If no case is made out by the petitioner or the party to invoke the inherent power as contemplated under Section

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<sup>2</sup> (2006) 5 MHA LJ 671

<sup>3</sup> (2004) 4 SCC 785

<sup>4</sup> (2003) 6 SCC 675

482 of Criminal Procedure Code and/or the discretionary or the supervisory power under Article 227 of the Constitution of India they may approach to the revisional Court, against the order of issuance of process.”

**6.** I am in respectful agreement with the view expressed by the High Court of Bombay in the afore-quoted decision. The existence of alternative remedy in my view cannot be a complete bar to exercise of jurisdiction by the court under Article 227 of the Constitution of India.

**7.** Having said that, one who seeks to invoke Article 227 jurisdiction, instead of proceeding to challenge the impugned order in appeal, necessarily subjects himself to the rigor of Article 227 which is extremely constricted in its scope, as compared to the expansive scope of appellate jurisdiction. That, however, is a risk that the Article 227 petitioner consciously take.

**8.** Suffice it to state that the present petition is, in my view, maintainable, even if an appeal against the impugned order may be said to exist under the Act.

**9.** Mr. Aditya Aggarwal, learned Counsel for the petitioner submits that the rejoinder filed by him, in response to the reply of the respondent, has not been placed on record as it was apparently filed beyond the time granted by the Court.

**10.** Delay in filing the rejoinder, if any, stands condoned. Let the

rejoinder be brought on record.

**11.** List this matter for disposal on 29<sup>th</sup> March, 2022.

**C. HARI SHANKAR, J**

**MARCH 24, 2022/kr**