

Unnumbered OP (C)Nos.
(Filing Nos.2281 and 2193
of 2022) of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022 / 2ND AGRAHAYANA, 1944

OP(C) NO. 2281 OF 2022(FILING NO.)

**AGAINST THE ORDER/JUDGMENT IN IA 2/2022 IN OS 14/2022 OF DISTRICT COURT
& SESSIONS COURT, KOZHIKODE**

PETITIONER/S:

**HOMBALE FILMS LLP, 2ND FLOOR, SAMPARKA SOUDHA, OPP. ORION
MALL, RAJAJINAGAR, BENGALURU, KARNATAKA, REPRESENTED BY ITS
AUTHORIZED SIGNATORY SHRI. KAPIL KUMAR SAHU, PIN - 560010**

BY ADVS.

SANTHOSH MATHEW

SAIKRISHNA RAJAGOPAL

SIDHARTH CHOPRA

ARUN THOMAS

ANIL SEBASTIAN PULICKEL

ABI BENNY AREECKAL

MATHEW NEVIN THOMAS

KARTHIK RAJAGOPAL

KURIAN ANTONY MATHEW

RESPONDENT/S:

- 1 THAIKKUDAM BRIDGE, 223B, DHWANI, UNITY LANE, MANIYANKALA
ROAD, VADACODE P.O., ERNAKULAM, KERALA
REPRESENTED BY ITS MANAGING PARTNER, GOVIND P. MENON
, PIN - 682021**
- 2 RISHAB SHETTY, AGED 39 YEARS, DIRECTOR AND ACTOR, S/O.
Y. BHASKAR. SHETTY, WG72 + 347, BEML LAYOUT, 7TH STAGE,
MAILASANDRA, BANGALORE, PIN - 560098**
- 3 PRITHVIRAJ FILMS LLP, NO. 59/300-E, FLAT NO. 4, ASSET CASA
GRANDE, MALIEKAL ROAD, THEVARA, COCHIN
COCHIN KERALA
, PIN - 682013**
- 4 AMAZON SELLER SERVICES PRIVATE LIMITED
8TH FLOOR, WORLD TRADE CENTRE, BRIGADE GATEWAY CAMPUS,
26/1, DR. RAJKUMAR ROAD, MALLESHWARAM (WEST), BANGALORE,
PIN - 560055**

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- 5 B.L. AJANEESH (A.K.A AJJU), AGED 34 YEARS, S/O. LOKMATH
343, DIVIK GOKUL, 3RD FLOOR, DOOR NUMBER 3/6,
14TH CROSS, 7TH MAIN, JAYANAGAR 2ND BLOCK,
BANGALORE ,, PIN - 560011
- 6 THE MATHRUBHUMI PRINTING AND PUBLISHING CO. LTD
M.J. KRISHNAMOHAN MEMORIAL BUILDING,
K.P. KESAVA MENON ROAD, KOZHIKODE
, PIN - 673001
- 7 GOOGLE INDIA , BLOCK 1, DIVYASREE OMEGA,
SURVEY NO. 13, KONDAPUR VILLAGE,
HYDERABAD, ANDHRA PRADESH, INDIA
- 8 SPOTIFY INDIA PRIVATE LIMITED, OFFICE NO. V-01, 5TH AND 6TH
FLOOR, MAFATLAL HOUSE (BUILDING), H.T. PAREKH MARG,
BACKBAY RECLAMATION, MUMBAI, MUMBAI CITY, MAHARASHTRA
, PIN - 400020
- 9 WYNK LIMITED, BHARTI CRESENT, 1, NELSON MANDELA ROAD,
VASANT KUNJ, PHASE-II, NEW DELHI
SOUTH DELHI DL
, PIN - 110070
- 10 SAAVN MEDIA LIMITED , A WING, 19TH FLOOR, ONE BKC. G BLOCK,
BANDRA (EAST), MUMBAI ,, PIN - 400051
- 11 PRITHVIRAJ PRODUCTIONS LLP, 59/300-E, FLAT NO. 4, ASSET
CASSA GRANDE, MALIEKAL ROAD, COCHIN, ERNAKULAM
, PIN - 682013
- 12 PRITHVIRAJ PRODUCTIONS PRIVATE LIMITED
59/300-E, FLAT NO. 4, ASSET CASSA GRANDE,
MALIEKAL ROAD, COCHIN, ERNAKULAM
, PIN - 682013
- 13 PRITHVIRAJ SUKUMARAN , AGED 37 YEARS, S/O. SUKUMARAN,
59/300-E, FLAT NO. 4, ASSET CASSA GRANDE, MALIEKAL ROAD,
COCHIN, ERNAKULAM,, PIN - 682013
- 14 SUPRIYA VIJAY MENON, AGED 35 YEARS, W/O. PRITHVIRAJ SUKUMARAN
59/300-E, FLAT NO. 4, ASSET CASSA GRANDE, MALIEKAL ROAD,
COCHIN, ERNAKULAM ,, PIN - 682013

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23.11.2022 ALONG
WITH UNNUMBERED OPC FILING NO.2193/2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

Unnumbered OP (C)Nos.
(Filing Nos.2281 and 2193
of 2022) of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022 / 2ND AGRAHAYANA, 1944

OP(C) NO. 2193 OF 2022(FILING NO.)

**AGAINST THE ORDER/JUDGMENT IN IA 2/2022 IN OS 14/2022 OF DISTRICT COURT
& SESSIONS COURT, KOZHIKODE**

PETITIONER/S:

HOMBALE FILMS LLP
2ND FLOOR, SAMPARKA SOUDHA, OPP. ORION MALL,
RAJAJINAGAR, BENGALURU, KARNATAKA
REPRESENTED BY ITS AUTHORIZED SIGNATORY SHRI. KAPIL KUMAR
SAHU,, PIN - 560010

BY ADVS.
SANTHOSH MATHEW
ARUN THOMAS
ANIL SEBASTIAN PULICKEL
ABI BENNY AREECKAL
MATHEW NEVIN THOMAS
KARTHIK RAJAGOPAL
KURIAN ANTONY MATHEW

RESPONDENT/S:

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REPRESENTED BY ITS MANAGING PARTNER, GOVIND P. MENON
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- 2 **RISHAB SHETTY ,AGED 39 YEARS,DIRECTOR AND ACTOR, WG72 +
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GRANDE,MALIEKAL ROAD, THEVARA, COCHIN
COCHIN KERALA , PIN - 682013**

4 **AMAZON SELLER SERVICES PRIVATE LIMITED
8TH FLOOR, WORLD TRADE CENTRE, BRIGADE GATEWAY CAMPUS,
26/1, DR. RAJKUMAR ROAD, MALLESHWARAM (WEST), BANGALORE,
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FLOOR, MAFATLAL HOUSE (BUILDING), H.T. PAREKH MARG,
BACKBAY RECLAMATION, MUMBAI,MUMBAI CITY, MAHARASHTRA
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9 **WYNK LIMITED, BHARTI CRESENT, 1, NELSON MANDELA ROAD,
VASANT KUNJ, PHASE-II, NEW DELHI
SOUTH DELHI DL
, PIN - 110070**

10 **SAAVN MEDIA LIMITED ,A WING, 19TH FLOOR, ONE BKC. G BLOCK,
BANDRA (EAST), MUMBAI ,, PIN - 400051**

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2022 ALONG WITH UNNUMBERED OPC 2281/2022, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

Unnumbered OP (C)Nos.
(Filing Nos.2281 and 2193
of 2022) of 2022

C.S DIAS,J.

**Unnumbered OP (C)Nos.
(Filing Nos.2281 and 2193 of 2022) of 2022**

Dated this the 23rd day of November, 2022.

COMMON JUDGMENT

As the two original petitions are between the same parties and are filed challenging the same order, they are consolidated and considered together.

2. Unnumbered O.P(C) (filing number 2193/2022) was presented on 2.11.2022 to call for records leading to the order dated 28.10.2022 passed in I.A.No.2/2022 in O.S No.14/2022 of the Court of the District Judge, Kozhikode (court below).

3. Subsequently, unnumbered O.P(C) (filing number 2281/2022) was presented on 9.11.2022 by producing the order dated 28.10.2022 as Ext.P1.

4. The common facts in the two original petitions leading to Ext.P1 order, in a nutshell, are:

(i) The first respondent, a musical band named 'Thaikudam Bridge', has filed the above suit against the petitioner and respondents 2 to 10, inter-alia, to declare they

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are the original author and composer having absolute moral and certain legal rights and entitlements reserved to it under the Copyright Act in the musical work and sound recording named 'Navarasam'.

(ii) Along with the suit, the first respondent filed I.A.No.2/2022 against the petitioner and respondents 2 to 5 and 7 to 10 to pass an order of temporary injunction, to restrain the above respondents from exhibiting, releasing on Over the Top platforms, streaming, and/or in any manner communicating to the Public in and/or through their services; the Cinematographic Film - 'Kantara' with the synchronised song 'Varaha Roopam' without crediting the petitioner, and pass an ad-interim order to the same effect, without notice to the respondents in the application, till the disposal of the application.

(iii) The court below has restrained the respondents in the application from using the music in 'Varaha Roopam' without the permission of the petitioner as a music in the Kannada film 'Kantara'.

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(iv) The petitioner is a limited liability partnership firm and is the producer of the film 'Kantara', which includes the song 'Varaha Roopam'.

(v) On 02.11.2022, the petitioner received copies of the impugned suit, the application and six of the seven documents. Even though the petitioner applied for the certified copies of the documents, the seventh document is yet to be issued.

(vi) The petitioner received Ext.P7 notice from the sixth respondent claiming ownership of the first respondent's song. The petitioner issued Ext.P8 limited holding response.

(vii) On 26.10.2022, the petitioner filed a caveat before the court below to defend its rights. However, the suit was filed by the first respondent and not the sixth respondent to circumvent the caveat and mislead the court below.

(viii) On 04.11.2022, the petitioner entered appearance in the suit and submitted before the court below, *inter alia*, that the first respondent had not complied with the mandate under Order 39 Rule 3 (a) of the Code of Civil Procedure,1908 (in short 'Code').

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(ix) The petitioner informed the court below that the film was released on 30.09.2022 and is playing in 6000 theatres worldwide; the dispute is to be adjudicated by a Commercial Court, and the impugned order has been challenged before this Court.

(x) The petitioner has learnt, after the passing of the impugned order, the sixth respondent has filed O.S.No.4/2022 before the District Court, Palakkad, through the same lawyer who has filed the present suit, and an ad-interim order has been passed in the said suit also. The said suit has been filed to evade the caveats filed by the petitioner.

(xi) The jurisdiction of the court below has been invoked erroneously; therefore, the impugned order is a nullity. The court below does not have the subject matter jurisdiction to entertain the suit in the light of the Copyright Act, 1957, read with the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015. The first respondent has deliberately kept the valuation of the suit vague to forum shop and oust the jurisdiction of the

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Commercial Court. The court below has no territorial jurisdiction to entertain the suit.

(xii) The maintainability of the suit and the application is a predominant issue. Hence, this Court may set aside Ext.P1 order and direct the court below to decide the maintainability of the suit.

(xiii) The first respondent has no locus standi to institute the suit.

(xiv) The court below has failed to note that the balance of convenience is in favour of the petitioner, who is suffering irreparable harm due to the impugned order

(xv) The impugned order has been passed without affording the petitioner an opportunity of being heard. The court below has exceeded its jurisdiction and acted with material irregularity. Hence, the original petition.

5. When Unnumbered O.P(C) (filing number 2193/2022) was presented, the Registry noted a defect that the petitioner has not produced a copy of the impugned order. The learned counsel appearing for the petitioner had replied

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that, as the petitioner was not served with a copy of the order, the original petition may be posted before the Bench.

6. When the original petition came up for consideration on 02.11.2022, this Court upheld the objection of the Registry and directed the petitioner to produce the order.

7. Without producing the order in the first original petition, the petitioner filed the subsequent Unnumbered O.P(C) (filing Number 2281/2022). The Registry marked the original petition as defective for the following reasons:

- (a) In view of Order 43 Rule 1 of the Code, whether O.P(C) is the proper remedy.
- (b) The respondents 6, 11 to 14 have not been impleaded in the original petition.
- (c) The status of the parties is different.
- (d) The respondents 3, 4, 6 to 12 are not represented by any person.

8. The learned counsel appearing for the petitioners replied to be above defects as follows:

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(i) Ext. P1 order is only an interim order and not a final one, and it is not appealable under Order 43 Rule 1.

(ii) As the District Court, Kozhikode does not have the jurisdiction, the original petition is maintainable as laid down by the Delhi High Court in **Vishal Pipes Limited v. Babia Pipes Industry and others** [2022 SCC online Delhi 1730].

(iii) It is well settled by the Honourable Supreme Court that an alternative remedy will not operate as a bar when an order has been passed in violation of principles of natural justice or is without jurisdiction.

(iv) The status of the parties is correctly shown, and the respondents 3, 4, 6 to 12 are private entities and their representatives are not known to the petitioner.

(v) Hence, the matter may be posted before the Bench.

9. Accordingly, the original petitions were posted before the bench.

10. Heard; Sri.S.Sreekumar, the learned Senior Counsel appearing for the petitioner assisted by Sri.Santhosh Mathew.

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11. Sri.S.Sreekumar vehemently argued that the first respondent has no locus standi to file the suit since the first respondent had assigned its rights to the sixth respondent. As per the allegations in the plaint, the assignment was done in 2015, whereas the song was composed only in 2017. The assignment deed was executed by the members of a music band with the sixth respondent and not with the first respondent. The duration of the assignment deed was for two years, with effect from 14.09.2015. A reading of the assignment deed shows that the cause of action for filing the suit is false. The trailer for the movie was released on 05.09.2022 on social media, and the movie was released on 30.09.2022. The first respondent filed the suit on 28.10.2022. Subsequently, the sixth respondent filed O.S.No.4/2022 before the Court of the District Judge, Palakkad, on 31.10.2022. Even though the petitioner had lodged a caveat, the same was circumvented by filing the suit before the court below through the first respondent. The valuation in the plaint is incorrect. The suit is only maintainable before the Commercial Court because, in the

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lawyer notice issued by the sixth respondent, they have claimed Rs.2/- crore as damage. In view of the Copyrights Act and the Commercial Courts Act, only the Commercial Courts have jurisdiction to entertain the suit. Without looking into these pivotal aspects, the court below has passed the impugned Ext.P1 order. Ext.P1 is manifestly illegal and passed by a Court lacking inherent, pecuniary and territorial jurisdiction. Hence, Ext.P1 is void ab-initio. Therefore, this court may set aside Ext.P1 order in exercise of its supervisory powers and direct the court below to consider the maintainability of the suit. The learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court in **Raj Shri Agarwal @ Ram Shri Agarwal and anr. v. Sudheer Mohan and ors. [2020 Live Law SC 864]** to drive home his contention that the remedy available under Article 227 of the Constitution of India cannot be taken away, and there is a distinction between the entertainability and maintainability of the original petition. He also relied on the decisions of the Hon'ble Supreme Court in **Whirlpool Corporation v. Registrar Of Trade Marks**

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[(1998) 8 SCC 1], **Surya Dev Raj v. Ram Chander Raj**
[(2003) 6 SCC 675], **Harbanslal Sahnia and Anr. V. Indian**
Oil Corpn. Ltd. and Ors.[(2003) 2 SCC 107], **M/s. Magadh**
Sugar and Energy Ltd. V. The State Of Bihar[2021 SCC
Online SC 801], **M/s. Radha Krishan Industries v. The State**
Of Himachal Pradesh [(2021) 6 SCC 771] and **M/s. Patil**
Automation Private Ltd v. Rakheja Engineers Private Ltd
[2022 SCC online SC 1028] to buttress his contentions that this
Court has power and jurisdiction to set aside Ext P1 order under
Article 227 of the Constitution of India without relegating the
petitioner to challenge the order in appeal.

12. After the original petitions were heard on 11.11.2022
and reserved for orders, the clerk of Sri. Santhosh Mathew
handed over a sealed cover to this Court. Accordingly, this
Court reposted the original petitions on 18.11.2022 as 'to be
spoken to'.

13. Sri. Santhosh Mathew then submitted that he had sent
the sealed cover containing the copies of the counter affidavit
filed by the petitioner to I.A No.2/2022 and the application filed

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under Order 7 Rule 11 of the Code to reject the plaint on the grounds already urged before this Court. Although the learned Counsel was directed to produce the said documents in the right royal way, if he so desired, he submitted, the documents were handed over only for information and the petitioner was sticking to the merits of the original petitions.

14. In the light of the above submission made by the learned counsel for the petitioner, this Court had directed the Registry to ascertain from the court below whether any counter affidavit has been filed in IA 2/2022 and any application has been filed in the suit. It is communicated by the court below that the petitioner has filed its counter affidavit to IA 2/2022, and the application was posted to 19.11.2022.

15. The common question that emanates for consideration in the original petitions is whether this Court is to interfere with Ext.P1 order invoking its supervisory jurisdiction under Article 227 of the Constitution of India.

16. The grievance of the petitioner in the original petitions is manifold; i.e., the first respondent has no locus standi to file

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the suit in view of the assignment made in favour of the sixth respondent; the first respondent has violated the provisions of Order 39 Rule 3 (a) of the Code; the court below has no inherent, pecuniary or territorial jurisdiction to entertain the suit; Ext P1 order is non-est as it is passed by a court lacking jurisdiction etc. Thus, the petitioner seeks to get Ext P1 order set aside under Article 227 of the Constitution of India.

17. The decisions that have been relied on by the learned Counsel for the petitioner, other than for the decision in Raj Shri Agarwal, are cases decided under Article 226 of the Constitution of India and not Article 227. Even in the said decisions, it is held that the rule of exclusion of writ jurisdiction in view of the alternative remedy is the rule of discretion and not of compulsion.

18. The power of superintendence of this Court under Article 227 of the Constitution of India is well-settled in a host of judicial pronouncements. The earliest of the decisions on the point is the decision in **Waryam Singh and another v.**

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Amarnath and another [AIR 1954 SC 215], wherein a five Judge Bench of the Hon'ble Supreme Court held thus:

"12. This power of superintendence conferred by Article 227 is, as pointed out by Harries C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* [AIR 1951 Cal 193], to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. xxx xxx xxx".

19. In **Shalini Shyam Shetty & anr. V. Rajendra Shankar Patil** [(2010) 8 SCC 329], the principles in Waryam Singh have been reiterated by the Hon'ble Supreme Court as follows:

"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 restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. **In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court**

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in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

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

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

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

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

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

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

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

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

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(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.

20. Again, in **Surya Dev Rai v. Ram Chander Rai & Ors.** [(2003) 6 SCC 675] the Hon'ble Supreme Court has held 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

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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.

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(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappraisal 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”.

21. Recently, the Hon’ble Supreme Court in **M/S Garment Craft vs Prakash Chand Goel** [(2022) 4 SCC 181] has held as follows:

“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 reappraise, 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**

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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)

“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.”

22. The above precedents lay down the broad principles to be followed by this Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India. To name a few: (i) The power under Article 227 of the Constitution of India is to be exercised to keep the subordinate courts within

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the bounds of their authority. (ii) The jurisdiction is to be exercised sparingly and in appropriate cases with care, caution and circumspection where the judicial conscience of the High Court dictates it to act; otherwise, it will result in grave injustice. (iii) The jurisdiction is not to correct errors of law, fact, or just because another view is possible. (iv) The exceptional power of judicial intervention is not to be exercised just for the grant of relief in individual cases but should be directed to promote public confidence in the administration of justice in the larger public interest. (v) The High Court shall not, at the drop of a hat, exercise its power of superintendence under Article 227 of the Constitution and interfere with the orders of tribunals or courts inferior to it. (vi) The power is not to be exercised like a court of appeal. (vii) In cases where there is an alternative statutory mode of redressal, the same should operate as a restraint on the exercise of power by the High Court. (viii) The 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

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there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

23. The first respondent filed the suit on 28.10.2022. The court below passed the impugned Ext P1 order on the same day and posted the suit to 4.11.2022 for return of notice.

24. Even before the petitioner received the copy of Ext.P1 order, they rushed to this court and filed the first original petition raising manifold contentions, including the lack of inherent, pecuniary and territorial jurisdiction of the court below, violation of the provisions of the Order 39 and Section 148 A of the Code, and seek to set aside Ext P1 order under Article 227 of the Constitution of India.

25. When this Court upheld the objection of the Registry, directing the petitioner to produce the impugned order, the petitioner filed the second original petition by producing Ext. P1 order.

26. Ext.P1 order is undoubtedly an ad-interim order of injunction passed by the court below under Order 39 Rule 1 of

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the Code after being prima facie satisfied that delay would defeat the purpose of the suit.

27. An order passed under Order 39 Rule 1 is appealable under Order 43 Rule 1 (r) of the Code.

28. The Code of Civil Procedure has explicitly laid down the procedure and the timelines to be followed by the courts while dealing with applications under Order 39 of the Code. The Code has also prescribed the hierarchy of Courts that needs to be approached for the redressal of the grievances of a litigant confronted with orders passed under the above provision.

29. The supervisory jurisdiction of this Court is not to be exercised to inter-meddle with every ad-interim order passed by the subordinate courts. If that is the case, the Courts of original jurisdiction and appellate Courts will become defunct, and this Court will be flooded with such litigation, unsettling and dislodging the legislative framework laid down under the Code.

30. The contentions raised by the petitioner are mixed and disputed questions of fact and law, which will have to be dealt

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with by the Court of the first instance or the appellate court. It is not for this Court to examine each and every contention raised in the original petition, that too at the ad-interim stage, and rule upon their worthiness and correctness. If this Court carries out such an exercise, it will foreclose the statutory rights of the parties and will undoubtedly cause grave prejudice to them.

31. At the cost of repetition, it is reiterated that the exceptional power of superintendence is not to be exercised at the drop of a hat at the ad-interim stage, particularly when the petitioner has an alternative and efficacious statutory remedy provided under the Code and the special statutes.

32. This Court fails to understand why the petitioner has directly approached this Court to vacate an ad-interim order by-passing the procedure established under law. I don't find any ground or reason for this Court to interfere with Ext.P1 ad-interim order at this nascent stage. It is up to the petitioner to appear before the court below, file its counter statement/affidavit and raise all its contentions before the court

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below. In any event, this Court is not persuaded to sit in appeal over Ext.P1 ad-interim order and examine its legality on the points urged before this Court under Article 227 of the Constitution of India. This Court is disinclined to entertain the original petition for the aforementioned reasons. In the above conspectus, the original petitions are dismissed, sustaining the objection of the Registry, which will be without prejudice to the right of the petitioner to work out its remedies in accordance with law.

SD/-

Sks/19.11.2022

C.S.DIAS, JUDGE

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APPENDIX OF OP(C) 2281/2022(Filing No.)

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER DATED 28.10.2022 IN I.A. NO. 2/2022 IN O.S. NO. 14/2022 PASSED BY THE HON'BLE DISTRICT AND SESSIONS COURT, KOZHIKODE
- Exhibit P2 A TRUE COPY OF PLAINT IN O.S NO. 14/2022 DATED 27.10.2022 ON THE FILE OF THE DISTRICT & SESSIONS COURT, KOZHIKODE.
- Exhibit P3 A TRUE COPY OF THE LIST OF DOCUMENTS IN O.S NO. 14/2022 DATED 27.10.2022 ON THE FILE OF THE DISTRICT & SESSIONS COURT, KOZHIKODE.
- Exhibit P4 A TRUE COPY OF THE I.A NO.2 IN O.S NO. 14/2022 DATED 27.10.2022 ON THE FILE OF THE DISTRICT & SESSIONS COURT, KOZHIKODE.
- Exhibit P5 A TRUE COPY OF THE EMAIL ISSUED BY THE LAWYER ACTING FOR M/S. PRITHVIRAJ PRODUCTIONS PRIVATE LIMITED DATED 31.10.2022 TO THE 1ST RESPONDENT/ PLAINTIFF'S COUNSEL .
- Exhibit P6 A TRUE COPY OF THE EMAIL RESPONSE DATED 01.11.2022 BY THE 1ST RESPONDENT/ PLAINTIFF'S COUNSEL IN THE IMPUGNED SUIT.
- Exhibit P6(a) A TRUE COPY OF THE AFFIDAVIT OF COMPLIANCE DATED 29.10.2022 BY THE 1ST RESPONDENT/ PLAINTIFF'S COUNSEL .
- Exhibit P7 A TRUE COPY OF THE SIXTH RESPONDENT'S NOTICE DATED 19.10.2022.
- Exhibit P8 A TRUE COPY OF THE LIMITED HOLDING RESPONSE DATED 21.10.2022 ISSUED BY THE PETITIONER TO THE 6TH RESPONDENT.
- Exhibit P9 A TRUE COPY OF THE CAVEAT FILED BY THE PETITIONER BEFORE THE HONOURABLE DISTRICT AND SESSIONS COURT, KOZHIKODE.
- Exhibit P9(a) A TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT & SESSIONS COURT, KOZHIKODE DATED 4-11-2022 IN O.S NO. 14 OF 2022 AS MADE AVAILABLE IN THE E-COURTS

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PORTAL.

- Exhibit P10 A TRUE COPY OF THE CAVEAT DATED 31.10.2022
PURPORTEDLY FILED BY THE 1ST
RESPONDENT/PLAINTIFF BEFORE THIS HON'BLE COURT
IN RELATION TO AN ORDER OF THE PRINCIPAL
DISTRICT AND SESSIONS COURT, THODUPUZHA.
- Exhibit P11 A TRUE COPY OF THE COVER WITHIN WHICH THE CAVEAT
WAS SENT BY THE LAWYER OF THE 6TH RESPONDENT.
- Exhibit P12 A TRUE COPY OF G.O.(MS.) NO. 51/2020/HOME DATED
24.02.2020.
- Exhibit P13 A TRUE COPY OF G.O.(MS.) NO. 53/2022/HOME DATED
18.03.2022.

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APPENDIX OF

OP(C) 2193/2022(Filing No.)

PETITIONER EXHIBITS

- Exhibit P1 A TYPED COPY OF THE RELEVANT EXTRACTS OF THE IMPUGNED ORDER AS RECORDED IN THE A DIARY OF THE HON'BLE DISTRICT AND SESSIONS COURT, KOZHIKODE DATED 28.10.2022.
- Exhibit P2 A TRUE COPY OF THE COPY OF THE IMPUGNED SUIT DATED 27.10.2022 INCLUDED IN THE ENVELOPE ADDRESSED TO PRITHVIRAJ FILMS LLP.
- Exhibit P3 A TRUE COPY OF COPY OF THE LIST OF DOCUMENTS INCLUDED IN THE ENVELOPE ADDRESSED TO PRITHVIRAJ FILMS LLP PRODUCTIONS PRIVATE LIMITED.
- Exhibit P4 A TRUE COPY OF THE COPY OF THE IMPUGNED I.A. DATED 27.10.2022 INCLUDED IN THE ENVELOPE ADDRESSED TO PRITHVIRAJ FILMS LLP.
- Exhibit P5 A TRUE COPY OF THE EMAIL ISSUED BY THE LAWYER ACTING FOR M/S. PRITHVIRAJ PRODUCTIONS PRIVATE LIMITED DATED 31.10.2022.
- Exhibit P6 A TRUE COPY OF THE EMAIL RESPONSE TO EXT. P5 DATED 01.11.2022 BY THE 1ST RESPONDENT/ PLAINTIFF'S COUNSEL IN THE IMPUGNED SUIT.
- Exhibit P7 A TRUE COPY OF THE SIXTH RESPONDENT'S NOTICE DATED 19.10.2022.
- Exhibit P8 A TRUE COPY OF THE LIMITED HOLDING RESPONSE DATED 21.10.2022 ISSUED BY THE PETITIONER TO THE 6TH RESPONDENT.
- Exhibit P9 A TRUE COPY OF THE CAVEAT FILED BY THE PETITIONER BEFORE THE HONOURABLE DISTRICT AND SESSIONS COURT, KOZHIKODE.