GAHC010144442026

2026:GAU-AS:10339

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/313/2026

INDIAN OIL CORPORATION LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT INDIAN OIL BHAWAN, G-9, ALI YAVAR JUNG MARG, BANDRA EAST, MUMBAI- 400051 AND HAVING ITS ASSAM STATE OFFICE AT INDIAN OIL BHAWAN, SECTOR-III, GUWAHATI REFINERY TOWNSHIP, NOONMATI NEAR NARENGI FLYOVER, GUWAHATI- 781020, ASSAM AND REPRESENTED BY ITS EXECUTIVE DIRECTOR, IOAOD STATE OFFICE, THORUGH HIS POWER OF ATTORNEY HOLDER SHRI SHRI MRINAL TALUKDARM AGED ABOUT 46 YEARS, SON OF LATE KABIN CH TALUKDAR, R/O PRAGATI NAGAR, 5TH BYE LANE, SATGAON GUWAHATI, PIN- 781171

VERSUS

SADGURU ENGINEERS AND ALLIED SERVICES PVT LTD AND ANR
.A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT HANUMAN TOWER, 406, 4TH FLOOR, SATI JAYMATI ROAD, ATHGAON, GUWAHATI 781001, KAMRUP M, ASSAM AND IS REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI MUKESH JALAN, S/O LATE SHREE CHAND JALAN, R/O FLAT 8C, BLOCK B, SIGNATURE ESTATES, ULUBARI, GUWHATI- 781007

2:HDFC BANK LIMITED
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT HDFC BANK HOUSE
SENAPATI BAPAT MARG
LOWER PAREL (W)
MUMBAI- 400013 AND ITS OFFICE IN GUWAHATI AT BUILDWELL
COMPOUND GROUND
FIRST AND 2ND FLOOR
ZOO ROAD
GUWAHATI- 781005

KAMRUP(M)
ASSAM AND REPRESENTED BY ITS BRANCH MANAGE

Advocate for the Petitioner : MR. M K CHOUDHURY, MR. M SARMA,MR. R BORPATRA,MR N BARUAH

Advocate for the Respondent : MR B YADAV(R1), MR A K RAI(R1),MS M DAS(R1)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 28.07.2026

Heard Mr. M.K. Choudhury, learned Sr. Counsel, assisted by Mr. N. Baruah, learned counsel for the petitioner.

2. This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred by the petitioner, namely, Indian Oil Corporation Ltd., a Company registered under the Companies Act, 1956 having its registered office at Indian Oil Bhawan, G-9, Ali Yavar Jung Marg, Bandra (EAST, Mumbai- 400051) and having its Assam State Office at Indian Oil Bhawan, Sector-III, Guwahati Refinery Township, Noonmati, Near Narengi Flyover, Guwahati-781020, Assam and represented by its Executive Director, IOAOD State office, through his Power of Attorney Holder Shri Mrinal Talukdar, challenging the order, dated 05.12.2025, passed by the learned Civil Judge (Senior Division) No. I, Kamrup (M) (Trial Court herein after)in Misc. (J) Case No. 1119/2025 arising out of Commercial Suit No. 309/2025.

3. It is to be noted here that vide impugned order dated 05.12.2025, the learned Trial Court, in Misc. (J) Case No. 1119/2025, had granted an ex parte ad-interim injunction restraining the petitioner from invoking the bank guarantees of the respondent No.1 herein.

4. Mr. Choudhury, learned counsel for the petitioner, Indian Oil Corporation Ltd. submits that the present petition is instituted under Article 227 of the Constitution of India, by the petitioner seeking following relief(s):-

(a) To set aside and quash the order dated 5.12.2025, passed by the learned Civil Judge (Sr Division) No. 2, Kamrup(M), in Misc. (J) Case No 1119/2025, in CS No 309/2025, thereby quashing the ad-interim ex-parte injunction order restraining encashment of Bank Guarantees specified in Schedule A of the suit;

(b) To direct the Additional District Judge No. 2, Kamrup(M), Guwahati to expeditiously dispose of the appeal bearing number Misc. Appeal No. 22 /2026 (Indian Oil Corporation Limited vs. Sadguru Engineers & Allied Services Pvt. Ltd. & Anr.) within the stipulation contained under Section 14 of the Commercial Courts Act, 2015, but not later than 04.11.2026; and

(c) To direct the HDFC Bank authorities, i.e. the Respondent No. 2 to extend the validity of the Bank Guarantees more specifically the Bank Guarantee no. 264GT01243020001 (expiring on 25.10.2025); Bank Guarantee no. 264GT01242930001 (expiring on 16.10.2025); Bank Guarantee no. 264GT01242890001 (expiring on 14.10.2025) beyond 04.11.2026, so as not to render the Misc. Appeal No. 22/2026 (Indian Oil Corporation Limited vs. Sadguru Engineers & Allied Services Pvt. Ltd. & Anr.) infructuous.

4.1. Referring to the petition Mr. Choudhury submits that the respondent No. 1, as plaintiff, has instituted a suit being Commercial Suit No. 309 of

2025, before the Ld. Court of the Civil Judge (Senior Division) No. 2, Kamrup(M), seeking a decree declaring that:-

(A) the Clause in Minutes dated 16.2.2024 and 8.10.2024 for imposing penal interest @ 15% are void for reason of uncertainty;

(B) charging of interest @ 15% by compounding it monthly amounted to penalty, was against public policy, and not binding upon it;

(C) imposition of penal interest on Invoice dated 8.3.2025 was illegal and arbitrary;

(D) claim of IOCL based on its ledger (Document No. 39) was illegal, arbitrary and not reflective of true balance outstanding;

(E) the petitioner/IOCL threatened invocation of Bank Guarantee as detailed in Schedule A of the plaint was arbitrary. excessive, disproportionate and abusive of dominant contractual position;

(F) realization of a sum of Rs 24,46,492/-from the petitioner/IOCL with @13 % interest p.a thereon from 11.2.2025;

(G) realisation of a sum of Rs 4,08,463/-, from the IOCL/petitioner with interest thereon @ 13% per annum;

(H) pendente lite and future interest @ 13 % p.a. thereon till realization of said amounts; and

(I) permanent injunction restraining invocation of Bank Guarantee as given in Schedule A; costs and other reliefs etc.

4.2. Mr. Choudhury also submits that the respondent No. 1 along with the said suit, also filed one application No. 474(F)/25, numbered as Misc. (J) Case No 1119/2025, under Order XXXIX Rules 1 and 2 read with Section

151 of the Code of Civil Procedure, 1908, praying for ad-interim temporary Injunction restraining the revision petitioner/IOCL from invoking the Bank Guarantees in Schedule A of the plaint, till the disposal of the case. Thereafter, upon the said application, the learned Trial Court, vide order dated 05.12.2025, granted the prayer of the respondent No. 1 for ad-interim temporary injunction and stayed any coercive action by the IOCL on its email dated 18.11.2025, and issued notice to the petitioner as defendant no. 1 therein as well as in the main suit CS No 309/2025, fixing the next returnable date on 05.01.2026.

4.3. Mr. Choudhury also submits that the petitioner received notice and appeared through counsel on 05.01.2026, and on the said date, filed the written objection to the Misc. (J) Case No 1119/2025. The petitioner was also granted time to file its written statement and other pleadings/documents in support of its contentions. The case was fixed on 18.02.2026 for necessary orders. The petitioner, thereafter, on 18.02.2026, filed the written statement and counter claim in the main suit and also filed application No 901/2026, in Commercial Suit No.309 of 2025, under Order XXXIX, Rule 4 of the Code, 1908, for modification of the ex-parte ad-interim injunction order, based on which a separate Misc. (J) Case No 226/2026, was registered. The respondent No.1/plaintiff was granted time to file his objection thereon, and the interim injunction was extended fixing the next date on 08.04.2026 for hearing on the injunction, and for objection on the Petitioner's prayer for modification of the said injunction order dated 5.12.2025. The next date was also fixed for hearing on compliance of Section 12A of the Commercial Courts Act, 2015 in the main suit. Thereafter, on 08.04.2026, respondent No. 1 did not file any objection petition/affidavit, but prayed for time on ground of illness of counsel. The Ld Court below fixed the Misc. (J) Case No 226/2026 on 27.4.2026 for objection, and the Misc. (J) Case No 1119/2025 and CS No 309/2025 on 21.05.2026, for hearing on injunction and compliance u/S 12 A of the Act, 2015. Further, Respondent No. 2 finally made an appearance in the suit and prayed for vacating the order declaring proceedings against it to go on ex-parte. Thereafter, the Misc. (J) case 226/2026 was listed on 27.04.2026, but the learned court below was again on leave. The respondent No.1 filed its objection, raising various specious pleas, without addressing it's earlier admission on facts, and only reiterated its financial condition based on contracts, payment disputes with third parties which have no nexus with the fact of admitted pending dues to IOCL. The respondent No.1 also admitted that its proprietor was facing criminal proceedings on charges of defrauding/cheating the NHAI, his suppliers and sub-contractors of their legitimate contractual dues and had obtained an order of regular bail on 27.02.2026, from this Court in this connection as well and the said bail order reflects serious allegations against the plaintiff of diversion of public funds, illegal subcontracting of work, non-payment of released funds, delay in completion of highway works etc and subsequently the NHIDCL has cancelled its contracts, the CBI has arrested a NHIDCL senior official for corrupt actions and the GST department has raided the plaintiff's offices in May, investigating it for tax evasion and these facts show duplicitous, deceptive and mala-fide actions and conduct of the plaintiff/respondent No.1, which would disentitle any litigant from relief in equity, such as continuing protection of an interim injunction etc from any Court of Law.

4.4. Mr. Choudhury has further pointed it out that the petitioner has also preferred a **<u>Misc. Appeal U/S 13 of the Commercial Courts Act, 2015, r/w O.XLIII, Rule 1(r) of the Code, </u>1908** against the order dated 08.04.2026 passed in Misc. (J) Case No 1119/2025. The said appeal has been moved before the learned Additional District & Sessions Judge No. 2, Kamrup (M) on 5.5.2026 and notices were issued thereon, on 6.5.2026 and the matter was heard on 11.5.2026 on the issue of interim prayer of the IOCL/appellant therein to be allowed to encash at least those BGs that would cover the admitted liability of Rs 3.30 odd crores of outstanding dues, and desired to hear respondent No. 1 before deciding on interim relief. The next date was fixed on 11.6.2026 for hearing, but as service report was awaited the appeal was again fixed on 25.6.2026. On that date, it was found that the Respondent No. 2 had appeared but notice plaintiff/respondent no. 1 was returned unserved with note/server report that establishment (office address of plaintiff as per the cause title of the suit) was under lock and key for the past 10-12 days. The next date has been fixed on 23.7.2026, for report and again steps have been taken, but it appears that the office address may have been either abandoned or locked up by the plaintiff, which effectively means that the appeal might be at an impasse for now, despite the same party actively contesting the commercial suit before the Trial Court through counsel all this while.

4.5. It is the further submission of Mr. Choudhury that the merits of the interim order/injunction, its modification or appropriate moulding of equitable relief to serve the best interests of both parties etc., are mixed questions of facts and law that are capable of being adjudicated by the Hon'ble Appellate Court below. These questions are not being raised herein on the merit of the injunctory relief afforded to respondent No.1, but rather on the jurisdiction, scope and competence of the learned Trial Court in granting such relief vide the order dated 5.12.2025, which is not under challenge in the Misc Appeal No 22/2026 at present, and as such is open for adjudication by this Hon'ble Court vide its supervisory jurisdiction under Article 227 of the Constitution of India, 1950.

4.6. He also submits that this civil revision petition is preferred mainly on the following grounds:

A. **The application filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, did not even make any prayer for stay of any coercive action on the part of the IOCL pursuant to its email dated 18.11.2025 and by including such relief in its ex-parte ad interim injunction order dated 5.12.2025, the Ld Trial Court has patently and wholly exceeded its jurisdiction by granting a prayer not specifically claimed by way of injunctory relief.**

B. **The learned Trial court failed to appreciate the fact that the plaintiff/respondent No. 1 evaded the mandatory procedure envisaged U/S 12A, as held by Hon'ble Supreme Court in Patil Automation Private Limited and Ors. vs. Rakheja Engineers Private Limited (2022 SCC online SC 1028)and by claiming urgency and irreparable harm, in case the mediation procedure was adopted and the BGs encashed by the petitioner/ IOCL in the meantime. However, the Ld Court failed to take note of the aforesaid proposition and also failed to consider the contemplation of urgent relief and the same was not properly deliberated upon by the learned Trial Court. And it has also failed to take note of its own** annexed documents of the plaintiff, which disclose that the issue of non-clearance of dues was being flagged since 15.3.2025, and the dues were hovering around Rs 6.6. crore in March.

C. The learned Trial court failed to consider that the plaintiff had itself proposed encashment of BGs to the tune of Rs 4 crore to clear its outstanding dues, vide its proposal dated 27.6.2025 (mentioned as Document 38 in plaint) and was now resiling from its own documented position by seeking an injunction on the encashment of any of the 4 BGs in Schedule A.

D. The learned Trial court failed to take into account the fact that even in his last communications, the plaintiff was not seriously disputing his liability and his only play was for grant of extension of time. And by granting injunction the learned Trial Court had facilitated the dilatory tactics of the plaintiff.

E. The learned Trial court failed to exercise its jurisdiction and power in the manner envisaged by the Act, 2015 and the Code, 1908 and as such the impugned order dated 5.12.2025 is totally perverse.

F. The learned trial court failed to examine the fact that the interest 15% was not compoundable and was not chargeable with monthly rests and it was to be charged on simple interest basis.

G. The learned Trial Court had failed to note that the claim of the IOCL was basically admitted by the plaintiff/respondent No. 1 to the tune of Rs 3.30 crores, in several official communications. The remaining amounts in dispute (Rs 28 odd lakhs claimed to be reimbursed/refunded by the IOCL) did not have the associated ring of urgency, to assist in circumvention of S. 12 A, for pre-institution mediation between the parties prior to commencing of the suit.

H. The learned Trial Court had failed to appreciate that the respondent had not provided any documentation/letters from the bank by way of which the additional liability of Rs. 4,08,463 was levied upon the plaintiff. The said submission was merely a misleading attempt before the Court for creation of additional claim upon the Corporation.

I. The learned Trial Court has failed to appreciate that intervention in encashment of an unconditional bank guarantee, to recover admitted liabilities, was permissible only in view of prevailing special equities, if any, the nature of which were never discussed in the order dated 5.12.2025 and fraud was admittedly not an issue in this case.

J. The cause of action in relation to any dispute pertaining to the invocation of a bank guarantee shall lie before the Courts, which exercise jurisdiction over the disputes arising from the parent/underlying contract, and in view the principle laid down in <u>Mix South East Asa Shong Co Nav Marat Enterprises Pvt. Ltd.</u> reported as <u>(1996) 3 SCC 443</u>, arose within the jurisdiction of the civil courts of Arunachal Pradesh, as the contract was for HSD supply from the State of Arunachal Pradesh only, not at Guwahati, Kamrup(M) where the BGs were executed etc.

4.7. Lastly Mr. Choudhury submits that unless an interim order as prayed for is passed, the petitioner would suffer irreparable loss and injury and that the intervening period from 5.12.2025 has been spent in bona-fide pursuit of other remedies by the petitioner, which have not borne fruit and in any case, do not involve the issue of legality of the order dated

5.12.2025, and that there is no other alternative remedy available to it and therefore, it is contended to allow this petition.

4.8. Referring to the additional affidavit, Mr. Choudhury submits that the petitioner, by way of the additional affidavit has placed on record some additional points and facts for consideration. He submits that the errors pointed out go to the root of the matter and strike at the foundation of the case set up by the plaintiff, and if permitted to continue would cause manifest injustice as well as interfere with the proper administration of justice and Rule of Law. And the issues highlighted by the petitioner fall within the very limited or circumscribed scope of the High Court's supervisory jurisdiction under Article 227, which is a facet of the Basic Structure of the Constitution and can not be deemed to be completely ousted by a statutory alternative remedy or provision.

4.9. Mr. Choudhury has also pointed it out that vide Notification dated 13.2.2019, the Courts of all Civil judges (Sr. Division) were designated as Commercial Courts. The Courts of District Judges were also designated as Commercial Appellate Courts under the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts (Amendment) Ordinance, 2015. But, a Division Bench of this Court, hearing the FAO No 73/2025 [**M/s Brahmaputra Distillery & Anr. Vs. Associated Alcohol and Beverages Company),** was pleased to hold the said Notification dated 13.2.2019 as non-est, having no legal effect or consequence, for reason of having been issued under the Ordinance 2015, which had been repealed and/or spent its force on 31.12.2015, by the coming into effect of the Act, 2015 from said date. Thus, the same very Commercial Court (i.e the Ld Civil Judge Sr. Division) constituted under the

Notification dated 13.2.2019, stood denuded of its very jurisdiction ab initio, as no jurisdiction could have been conferred when the power under the Ordinance and the Ordinance of 2015 itself no longer existed. He also pointed it out that the present suit, however, was instituted by plaintiff prior to the date of the aforesaid judgment and order dated 18.12.2025. But, it would be apparent that the learned Civil Judge (Sr. Division) could no longer proceed with the trial of the suit CS No 309/2025 (and its connected applications/Misc J Cases). As such, the question of jurisdiction of the Ld Trial Court in initially passing, and subsequently continuing the interim order dated 5.12.2025, assumes critical significance and requires judicial appreciation under Article 227.

5. It is to be noted here that during the course of hearing a question was put to Mr. Choudhury, as to whether the present petition under Article 227 of the Constitution of India is maintainable, as under Order 43 Rule 1(c) CPC, an appeal lies against a rejection order, under Order 9 Rule 13 CPC, and while alternative remedy is available and the petitioner has been availing the same by filing an appeal before the appellate forum, Mr. Choudhury submits that since the learned Trial Court had committed gross jurisdictional error and the order being passed in flagrant disregard of law and thereby occasioning failure of justice, the same can be interfered with under Article 227 of the constitution of India.

5.1. It is also to be noted here that when another question was put to him referring to the proposition of law laid down in the case of **Mohammed Ali vs. Jaya, passed on 11.7.2022 in Civil Appeal No 4113 of 2022,** regarding maintainability of the petition under Article 227, wherein the Hon’ble Supreme Court has held that once there was a statutory alternative remedy by way of an appeal available, the High Court ought not to entertain revision application under Section 115 of CPC and under Article 227 of the Constitution of India. Mr. Choudhury stated that in the said case an ex-parte judgment and decree was challenged and in the instant case an ex-parte ad-interim injunction order is being challenged. There is no decree, whether preliminary or final, against the petitioner herein and the ex-parte interim injunction, being in the nature of an interlocutory order, cannot be assailed u/S 115 of the Code, 1908, but ordinarily by way of an appeal u/ S 13 of the Act.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 05.12.2025. Also gone through the decision referred to by the petitioner in the revision petition.

7. From a cursory perusal of the petition reveals that the Commercial Suit No. 309 of 2025, is instituted by the respondent No. 1, as plaintiff, before the Ld. Court of the Civil Judge (Senior Division) No. 2, Kamrup(M), seeking a decree declaring that the Clause in Minutes dated 16.2.2024 and 8.10.2024 for imposing penal interest @ 15% are void for reason of uncertainty; charging of interest @ 15% by compounding it monthly amounted to penalty, was against public policy, and not binding upon it; imposition of penal interest on Invoice dated 8.3.2025 was illegal and arbitrary; the claim of IOCL based on its ledger (Document No. 39) was illegal, arbitrary and not reflective of true balance outstanding; invocation of Bank Guarantee as detailed in Schedule A of the plaint was arbitrary, excessive, disproportionate and an abusive of dominant contractual position, realization of a sum of Rs 24,46,492/- and Rs 4,08,463/-, pendente lite and future interest @13 % interest p.a. with effect from 11.2.2025; pendente lite and future interest@ 13 % p.a. thereon till realization of said amounts; and for permanent injunction restraining invocation of Bank Guarantee as given in Schedule A; costs and other reliefs etc.

7.1. Respondent No. 1, along with the said suit, also filed one application No. 474(F)/25, numbered as Misc. (J) Case No 1119/2025, under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, praying for ad-interim temporary Injunction restraining the revision petitioner/IOCL from invoking the Bank Guarantees in Schedule A of the plaint, till the disposal of the case.

7.2. Thereafter, upon the said application, vide impugned order dated 05.12.2025, the learned Trial Court, in Misc. (J) Case No. 1119/2025, had granted an ex-parte ad-interim injunction restraining the petitioner from invoking the bank guarantees of the respondent No.1 herein and stayed any coercive action by the IOCL on its email dated 18.11.2025, and issued notice to the petitioner as defendant no. 1 therein as well as in the main suit CS No 309/2025, fixing the next returnable date on 5.1.2026.

7.3. It also appears that the petitioner has also preferred a Misc. Appeal U/S 13 of the Commercial Courts Act, 2015, r/w O.XLIII, Rule 1(r) of the Code, against the order dated 08.04.2026, passed in Misc. (J) Case No 1119/2025, and the same is pending before the learned Additional District & Sessions Judge No. 2, Kamrup (M) and on 05.05.2026 and notices were issued thereon.

8. In view of the aforesaid factual matrix and also in view of the submissions advanced by Mr. Choudhury, learned counsel for the petitioner, the issue, to be addressed by this Court, first, is as to whether the present petition under Article 227 is maintainable or not.

Legal Trajectory:

9. Order 43 Rule 1(r) CPC explicitly provides for an appeal against an order of injunction. It read as under:-

> **1. Appeal from orders:- An appeal shall lie from the following orders under the provisions of section 104, namely: —**
>
> **(r) an order under rule 1, rule 2 [rule 2A], rule 4 or rule 10 of Order XXXIX;**

9.1. Thus, Rule 1(r) primarily relate to **temporary injunctions and interlocutory reliefs** granted by a court. This means that if a court passes an ex-parte or ad-interim injunction, the affected party has the right to appeal under this provision. The statutory provision, i.e. Order 43 Rule 1(r) CPC is very clear and unambiguous that only an appeal will lie against an order under Rule 1, Rule 2 [Rule 2A] of Rule 4 or Rule 10 of Order XXXIX CPC.

10. It is, however, not in dispute that appeal is an alternative remedy provided in the Code of Civil Procedure itself. Now, what is to be looked into is, when alternative remedy is available, and in fact the same is being availed by the petitioner by filing a Misc. Appeal U/S 13 of the Commercial Courts Act, 2015, r/w O. XLIII, Rule 1(r) of the Code, against the order dated 08.04.2026 passed in Misc. (J) Case No 1119/2025, and when the same is pending before the learned Additional District & Sessions Judge No.

2, Kamrup (M) and on 05.05.2026, and notices were issued thereon and the same is pending for disposal, can the petitioner successfully maintain the present petition under Article 227 of the Constitution of India.

Alternative Remedy vs. Constitutional Remedy under Article 227:-

11. It is also well settled that when alternative remedy is available by way of an appeal of review, the constitutional remedy under Article 227 of the Constitution of India is not available. In the case of **Sadhana Lodh vs. National Insurance Co. Ltd. and Anr.,** reported in **(2003) 3 SCC 524,** Hon'ble Supreme Court has held as under:-

> "**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 : 2002 SCC (Cri) 1788]). 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 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."

11.1. Subsequently, in the case of **Mohamed Ali vs. Jaya & Ors. CIVIL APPEAL NO. 4113 of 2022, With CIVIL APPEAL NO. 4114 of 2022, Hon'ble Supreme Court has held as under:-**

21. At this stage, the decision of this Court in the case of <u>Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society;</u> reported in <u>(2019) 9 SCC</u> 538, is required to be referred to. In the said decision, it is observed and held by this

Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court <u>and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself.</u> While holding so, it is observed and held in paragraphs 11 to 13 as under:—

> "**11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu* v. *S. Chellappan* reported in (2000) 7 SCC 695], this Court held that <u>"though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy</u>".**
>
> **12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special**

enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai* v. *Ram Chander Rai* [*Surya Dev Rai* v. *Ram Chander Rai*, (2003) 6 SCC 675], pointed out in *Radhey Shyam* v. *Chhabi Nath* [*Radhey Shyam* v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. <u>Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution.</u> <u>Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."</u>

22. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India."

12. Thus, the legal proposition is well settled in the case of **Sadhana Lodh(supra),** **<u>Where a statutory right to 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.</u>** Said proposition is also affirmed in subsequent decision, in **Mohamed Ali (supra),** wherein it has been held that **t<u>he High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself</u>.** It is also well settled in **A. Venkatasubbiah Naidu (supra) that <u>it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy</u>.** Further, it is well settled in the decision of Hon'ble Supreme Court

Virudhunagar Hindu Nadargal Dharma Paribalana Sabai (supra) that the **availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution.**

13. This Court has considered the submissions of Mr. Choudhury, learned counsel for the petitioner in respect of the decision of a Division Bench of this Court, in the FAO No 73/2025 [**M/s Brahmaputra Distillery & Anr. Vs. Associated Alcohol and Beverages Company),** wherein the said Notification dated 13.2.2019, was held to be non-est, having no legal effect or consequence, for reason of having been issued under the Ordinance 2015, which had been repealed and/or spent its force on 31.12.2015, by the coming into effect of the Act, 2015 from said date. Notably, the Commercial Court (i.e. the Ld Civil Judge Sr. Division) was constituted under the Notification dated 13.2.2019. And in view of the decision of a Division Bench of this Court, in the FAO No 73/2025, the learned Trial Court, now, has no jurisdiction. But, it appears that the present suit, however, was instituted by plaintiff prior to the date of the aforesaid judgment and order dated 18.12.2025. According to Mr. Choudhury the question of jurisdiction of the learned Trial Court in continuing the interim order dated 5.12.2025, assumes critical significance and requires judicial appreciation under Article 227.

14. The submissions of Mr. Choudhury, learned counsel for the petitioner received due consideration of this Court. But, this Court is unable to record concurrence to his submission in as much as the issue can be raised before the learned appellate forum where the Misc. Appeal U/S 13 of the Commercial Courts Act, 2015, r/w O.XLIII, Rule 1(r) of the Code, against the order dated 8.4.2026 passed in Misc. (J) Case No 1119/2025, is pending.

14.1. Further, in view of the decision of a Division Bench of this Court, in the FAO No 73/2025, procedural remedy under Order VII Rule 11 CPC, that allows a court to summarily dismiss a civil suit at the threshold if it is barred by law, is available. The petitioner herein can file an application under Order VII Rule 11 CPC, before the learned Trial Court for rejection of the plaint.

15. Thus, application of aforesaid principles to the given factual matrix of the case in hand, left no doubt in the mind of this Court that the present petition is not at all maintainable. It is not maintainable, basically, for following three reasons:-

(i) The impugned order is an appealable order, in view of Order 43 Rule 1(d) CPC,

(ii) The petitioner has admittedly filed an appeal and the same is pending adjudication before the appellate forum;

(iii) When alternative remedy is available, it is not open to the High Court to entertain a petition under Article 227 of the Constitution.

16. In the result, this Civil Revision Petition is found to be not maintainable, and accordingly, the same stands dismissed, leaving the parties to bear their own costs. Before parting with the record, this Court is inclined to make it clear that the present petition is dismissed only on the ground of maintainability, and this Court is not entering into the merit of the same.

17. However, the petitioner will be at liberty to raise the issue of jurisdiction before the learned appellate forum. Further, liberty will remain with the petitioner to raise the issue of jurisdiction before the learned Trial Court, under Order VII Rule 11 CPC, by filing appropriate petition.

JUDGE

Comparing Assistant