GAHC010013822015

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

Case No. : CRP/169/2015

SMT. USHA ROY
W/O- LT. NARAYAN CHANDRA ROY, R/O- SATI JAYMATI PATH, REHABARI BILPARA, P.O.- REHABARI, GHY- 8, DIST.- KAMRUP M, ASSAM.

VERSUS

PINKU ROY @ JOGAL ROY @ TINKU ROY @ KATU ROY and 5 ORS.
S/O- LT. SUNIL KR. ROY, R/O- SATI JAYMATI PATH, REHABARI BILPARA, P.O.- REHABARI, GHY- 8, DIST.- KAMRUP M, ASSAM. PRESENTLY RESIDING AT- C/O- HABUL HAWALDAR, SECY. SABUZ SONGHA, VILL.- RAM CHANDRAPUR, P.S.- DAIMOND HARBOUR, DIST.- 24 PARGONA, WEST BENGAL, PIN- 74332.

2:MAMTA CHOUDHURY
W/O- LT. PRANAB CHOUDHURY.

3:PRANJAL CHOUDHURY
S/O- LT. PRANAB CHOUDHURY.

5:PRADIP CHOUDHURY
BROTHER OF LT. PRANAB CHOUDHURY
ALL ARE R/O- SATI JAYMATI PATH
REHABARI BILPAR
P.O.- REHABARI
P.S.- PALTANBAZAR
GHY- 8
DIST.- KAMRUP M
ASSAM.

6:NILA RAY
W/O- AAMAR MAHAJAN
R/O- NINE MILE

GARUBAZAR
P.S.- JORABAT
GHY- 8
DIST.- KAMRUP M
ASSAM

Advocate for the Petitioner : MR. K SAIKIA

Advocate for the Respondent : MR.P K DEKAR-2 and 5

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **14.09.2021**
Date of Judgment : **28.09.2021**

JUDGMENT & ORDER (ORAL)

By this application filed under Article 227 of the Constitution of India, the supervisory jurisdiction of this Court is sought to be invoked in challenging an order dated 07.02.2015 passed in Petition No.8299/2013 and Petition No. 8298/2013 arising in Title Suit No. 26/2007 by the learned Court of the Munsiff No. 1, Kamrup (M). By the aforesaid order, the application filed by the present petitioner, as plaintiff under Order XXII Rule 3 and 9(2) of the Code of Civil Procedure, 1908 (hereinafter the CPC) with another petition filed under Section 5 of the Limitation Act, 1963 for condonation of delay have been dismissed.

2. To examine the validity and legality of the impugned order dated 07.02.2015, it would be convenient to place on record the brief facts of the case.

3. The projected case of the petitioner is that the petitioner, as plaintiff had instituted a Title Suit being T.S. No. 52/2003 in the Court of the learned Civil Judge (Sr. Division) No. 2, Kamrup (later on transferred to the learned Court of the Munsiff No.1, Kamrup and renumbered as Title Suit No. 26/2007) against present respondent No.1, late Pranab Choudhury, the predecessor of the respondent Nos. 2 to 5 and the respondent No.6 as

defendants. The suit was filed for specific performance of contract. The plaintiff had alleged that the respondent No.1, who was the owner of the plot of land measuring 10 laches covered by dag No.1616 (old) / 1505 (new) of patta No. 1391 (old) / 269 (new) had entered into an agreement dated 19.03.2002 with the petitioner for selling out his share over the said land. The land had devolved upon the respondent Nos. 1 and 6 upon the death of the original owner who was their father and at the time of entering into the agreement, the respondent No.1 had projected that the respondent No.6 had no objection to the subject of the agreement. However, after execution of the said agreement and after receipt of a substantial sum from the petitioner, the respondent No. 1 violated the terms of the agreement by proposing to sell the land to some other persons. Under such circumstances, the petitioner, as plaintiff had instituted the suit. During the pendency, the predecessors of the respondent Nos. 2 to 5 namely, late Pranab Choudhury (since deceased) was impleaded as the defendant No.2 and accordingly, the proforma respondent No. 6 was renumbered as the proforma defendant No.3. The Suit had proceeded *ex-parte* against the respondent / defendant No.1 however, the predecessor of the respondent Nos. 2 to 5 in his written statement had stated that he had entered into an agreement for sell of the suit land and executed by the respondent Nos. 1 and 6 in his favour in the Office of the Sub-Registrar, Guwahati on 27.08.2002 and accordingly denied the execution of the agreement in question dated 19.03.2002. The respondent No. 6 in her written statement had stated that the original owner was her father Sunil Kumar Roy upon whose death, the land devolved upon the respondent Nos. 1 to 6. In the last part of the December, 2000 a family arrangement was made and the land in question came to the share of the respondent No. 6 and therefore the respondent No. 1 was divested of any powers or authority to sell or transfer the suit property.

4. It is stated that during the pendency of the Suit, the petitioner had previously preferred a Civil Revision Petition being CRP No.127/2006 against an order dated 17.01.2006 in which this Court vide an order dated 21.09.2007 had passed an order of stay of further proceedings and had called for the records. During the pendency of the said revision petition, Pranab Choudhury (the defendant No. 2 in the Suit) had expired on 03.10.2008 leaving behind the respondent Nos. 2 to 5 as legal heirs. It is the case of the petitioner that she had given the said information to her advocate and was under the *bona fide* belief that necessary

application for substitution was being filed, both in the Civil Revision Petition as well as in the title suit. The petitioner also claimed to have been signed certain documents and handing over the same to her advocate.

5. It has further been alleged that while the petitioner was under the *bona fide* belief that necessary steps for substitution have already been taken, she was served with a notice issued by the learned Court of the Munsiff No.1, Kamrup in connection with Title Suit No. 26/2007. Upon appearing, the petitioner came to know that this High Court had passed an order dated 03.12.2012 dismissing the CRP holding the same to have become infructuous and the records were accordingly sent back. The petitioner further came to know that though she was under the *bona fide* belief that necessary steps were taken after the death of the defendant No.2, no such steps were taken and as a result thereof, the Suit had abated. Accordingly, the petitioner had immediately filed an application for substitution of the respondent Nos. 2 to 5 in place of the defendant No. 2 by setting aside the abatement and the said petition was numbered as Petition No.8299/2013. As the petition was barred by limitation with a delay of 1769 days, a separate application was filed under Section 5 of the Limitation Act for condonation of the delay and the said petition was numbered as Petition No.8298/2013. Both the applications were resisted by filing written objection.

6. It was the case of the petitioner that she being a widow and was not acquainted with the provisions of law and was accordingly wholly unaware regarding the steps taken for substitution of the legal heirs. However, without considering her case, the impugned order has been passed rejecting the prayer and it is the legality and validity of the order dated 07.02.2015 which is the subject matter of scrutiny.

7. I have heard Shri R.K. Bhuyan, learned counsel for the petitioner whereas the contesting respondents are represented by Shri R. Sharma, learned counsel. The materials before this Court have been carefully examined.

8. Shri Bhuyan, the learned counsel for the petitioner submits that the law relating to abatement and for condonation of delay are procedural in nature in which a liberal approach is required. However, the learned Court, while passing the impugned order lost sight of the basic principles. It has further been urged that technicalities should not be allowed to prevail

over substantial justice. The learned counsel for the petitioner further submits that there was no default at all on the part of the petitioner in taking timely steps and it was only because some lapse on the part of her counsel that the situation had arisen to file petition for setting aside abatement as well as application for condonation of delay. The learned counsel accordingly submits that the impugned order dated 07.02.2015 be set aside.

9. In support of his submission, Shri Bhuyan, the learned counsel for the petitioner had relied upon a case of ***Banwari Lal & Ors. Vs. Balbir Singh***, reported in ***(2016) 1 SCC 607***. It is submitted that the Hon'ble Supreme Court in the said case had held that the provisions of Order XXII of the CPC are not penal in nature. It is the rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. The Hon'ble Supreme Court had also taken into consideration that an earlier judgment of the Constitutional Bench in the case of ***Sardar Amarjit Singh Kalra Vs. Pramod Gupta***, reported in ***(2003) 3 SCC 272*** wherein it has been stated that law of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose an adjudication on merits of substantial rights of the citizen. It has further been held that procedural law has always been the handmaid of justice and not meant to hamper its cause.

10. Per contra, Shri R. Sharma, learned counsel for the contesting respondents submits that no case, whatsoever, has been able to be made out by the petitioner in this revision petition. The learned counsel has urged that the conduct of the petitioner is wholly inconsistent and putting the blame on the counsel to obtain a benefit is wholly unjustified in the present case. While the petitioner admits that she was under the *bona fide* impression that due steps for substitution were taken in the earlier round of litigation before this Court which was numbered as CRP No. 127/2006, there is no explanation, whatsoever with regard to the ignorance of the final orders passed by this Court in the said CRP No. 127/2006 on 03.12.2012. No details have been given as to when the notice from the learned Court of the Munsiff No.1 was issued or received and since the application for setting aside abatement as well as condonation of delay were apparently filed in the year 2013, no explanation has been given regarding the period from the date of receipt of the notice till the date of filing the petitions. It is further submitted that by the inaction of the party to take due steps in time for

substitution, a right has accrued upon the respondents and that vested right cannot be taken away lightly. It is finally submitted that the impugned order dated 07.02.2015 does not call for any interference by this Court as the same is an order passed by a competent Court having jurisdiction and by taking into consideration all the relevant factors.

11. A further contention is raised by Shri Sharma, the learned counsel on the maintainability of the present petition. He submits that the impugned order dated 07.02.2015 has been passed mainly on an application under Order XXII Rule 9 and by drawing the attention of this Court to Order XLIII Rule 1(k) of the CPC, it is contended that such orders are appealable in nature and therefore a revision will not lie.

12. The rival contentions of the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

13. While the petitioner has contended that while applying the provisions of Order XXII of the CPC and also Section 5 of the Limitation Act, a liberal approach should be adopted and technicalities should not be allowed to defeat substantial justice, the respondents have submitted that the rights which have accrued upon them due to the inaction of the petitioner to take due steps on time, should not be taken away more so, when the conduct of the petitioner is doubtful and the delay is an inordinate one.

14. Before going to the impugned order dated 07.02.2015, this Court would like to rely upon the law laid down by the Hon'ble Supreme Court on the subject. The case of *Banwari Lal (Supra)* has already been relied upon by the petitioner. For better appreciation, the relevant paragraphs of the said case are extracted hereinbelow-

> "*10. Provisions of Order XXII CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272, a Five Judge Bench of this Court held as under:-*
>
> > *26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice*

and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice…"

(Underlining added)

11. In Sital Prasad Saxena (D) by Lrs. v. Union of India and Ors., (1985) 1 SCC 163, it was observed that the rules of procedure under Order XXII CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for

punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained."

15. In the case of ***State Of Nagaland Vs. Lipok Ao & Ors.***, reported in ***(2005) 3 SCC 752*** the Hon'ble Supreme Court has held that technicalities should not override substantial justice, the relevant paragraphs are extracted hereinbelow-

"***7.*** *The trial court noted that the ballistic report established that the bullets were fired from the guns of the accused-respondents. A finding was also recorded that the respondents exceeded their power of opening fire, and this constituted misfeasance, but absence of the post-mortem report was held to have vitally affected the prosecution case. It was also held that the accused persons had fired with AK-47 and M-22 rifles in self-defence. Therefore, benefit of doubt was given to them. A pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other the former has to be preferred.*

.....

.....

15. *It is axiomatic that decisions are taken by officers/agencies at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic*

approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants."

16. In the case of ***State Of Haryana Vs. Chandra Mani & Ors.***, reported in **(*1996) 3 SCC 132***, it has been laid down that in matters of condonation of delay, a pragmatic and justice-oriented approach is required. The relevant paragraph is extracted hereinbelow-

"*11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court — be it by private party or the State — are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it*

on table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

17. In the case of ***Bhagwan Swarup Vs. Mool Chand & Ors.,*** reported in ***(1983) 2***

SCC 132, it has been laid down that when a suit abates, a very valuable right accrues to the other party and such right should not be interfered with lightly. Paragraph 15 of the said judgment reads as follows-

> "*15. The provision fixing a particular time for making an application for bringing legal representatives on record with the consequence of the suit or appeal abating if no application is made within time, have been enacted for expeditious disposal of cases in the interest of proper administration of justice. It is further to be borne in mind that when it suit or an appeal abates, a very valuable right accrues to the other party and such a right is not to be ignored or interfered with lightly in the name of doing substantial justice to the party, as depriving a party of a lawful right created in the interest of administration of justice in the absence of good grounds results in injustice to the party concerned. For doing justice to the parties, the Courts have consistently held that whenever sufficient cause is shown by a party at default in making an application for substitution, abatement will have to be set aside as the good cause shown for explaining the delay in making the application is sufficient justification, to deprive the other party of the right that may accrue to the other party as a result of the abatement of the suit or appeal. The Courts have also consistently ruled that laches or negligence furnish no proper grounds for setting aside the abatement. In such cases, a party guilty of negligence or laches must bear the consequences of his laches and negligence and must suffer. In appropriate cases, taking into consideration all the facts and circumstances of a case, the Court may set aside the abatement, even if there be slight negligence or minor laches in not making an application within the time provided an overall picture of the entire case, requires such course for furthering the cause of justice. When negligence and laches are established on the part of the party who seeks to set aside the abatement, the application of such a party should be entertained only in the rarest of cases for furthering the ends of justice only and on proper terms.*"

18. On a reading of the case laws governing the field, the following principles (not exhaustive) can be taken as guidelines for deciding a petition for setting aside abatement as well as for condonation of delay –

i. The power vested upon a Court to exercise such jurisdiction is essentially a discretionary one. The natural corollary is that there has to be an application of a judicious mind by taking into consideration all the relevant factors.

ii. The relevant factors which are required to be taken into consideration would include the conduct of the party as discretion can be exercised only by balancing the equities.

iii. The length / duration of delay and the explanation put forward are both relevant considerations for exercise of such discretion.

iv. The Court would generally proceed with a liberal, pragmatic and justice-oriented approach with such petition as substantial justice should not be allowed to be defeated by mere technicalities.

v. At the same time, the Court would also not lose sight of the fact that a valuable right has accrued on the other party and such right should not be interfered with lightly. Therefore, though there may not be a requirement to seek a day-to-day explanation, the explanation for the delay should be a reasonable one which is acceptable to a man of ordinary prudence.

19. Under the aforesaid backdrop, let us now examine the impugned order dated 07.02.2015. However, a note of caution needs to be taken into consideration at this stage in view of the fact that it is the supervisory powers of this Court under Article 227 of the Constitution of India which has been sought to be invoked in this petition. It is a settled law that such powers are to be exercised in a circumscribed manner and only on extra ordinary circumstances as normally the Code itself provides for a revision under Section 115. Such powers are to be exercised under certain circumstances only, few instances of which can be culled down as follows:

i. When the order passed is without jurisdiction

ii. When there is refusal to pass an order by the Court which was vested with such jurisdiction

iii. When the order appears to be fraught with material irregularity illegality.

iv. When the order has been passed by ignoring / overlooking the relevant factors into consideration and

v. When the order has been passed by taking into consideration irrelevant and extraneous factors.

vi. Interference may not be called for when the view taken is a plausible view and only because an alternative view is possible to be taken on the basis of the materials.

vii. When the Code itself provides for a remedy, recourse to Article 227 is a near total bar.

20. At this stage, it would be valuable to refer to the decision of the Hon'ble supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors.,*** reported in ***(2019) 9 SCC 538*** wherein it has been laid down that availability of the remedies under the CPC is a near total bar for invoking the jurisdiction under Article 227 of the Constitution of India. For ready reference the relevant paragraphs are extracted hereinbelow-

"*11. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the 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 vs. S. Chellappan & Ors, (2000) 7 SCC 695, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized 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".*

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 the 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 vs. Ram Chander Rai, (2003) 6 SCC 675, pointed out in Radhey Shyam vs. Chhabi Nath, (2015) 5 SCC 423 that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

13. 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. 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."

21. A reading of the impugned order dated 07.02.2015 would reveal that the learned Court proceeded as per the guidelines of adopting a liberal approach by referring to judgment of the Hon'ble Supreme Court as well as this Court. Thereafter, the learned Court has noticed that the statements of the petitioner were contradictory. The Court has also taken note of the fact that in an appeal between the parties namely RFA No. 49/2010 in the High Court, the legal heirs of the defendant No.2 were already substituted and therefore it would be wholly unreasonable to accept the reasons for not taking steps on time to substitute. The inordinate delay of 1769 days which have been taken note of cannot be said to be an irrelevant consideration. The learned Court has also noted that in CRP No. 127/2006 no steps were taken which led to dismissal for non-prosecution and there was failure to take steps for substitution. The Court also took note of the fact regarding the statement made about the death of the defendant No.2 from the report of the Nazir is self contradictory *inasmuch as* it

is the case of the petitioner that she had taken steps in instructing her counsel to apply for substitution in the High Court.

22. The conclusion arrived at by the learned Court does not, in any manner, appear to be unreasonable or arbitrary and rather the same appears have been passed by taking into consideration all the relevant factors. This Court is of the view that the discretion exercised by the learned Court below does not appear to be either in excess or unreasonable. This Court is also of the opinion that in view of the provisions of the Code providing for an appeal against such orders and the interpretation given by the Hon'ble Supreme Court in the case of *Virudnagar (supra)*, the present petition filed under Article 227 of the Constitution of India is not maintainable.

23. Accordingly, the instant petition is dismissed. Consequently, the interim order passed on 29.05.2015 which was continuing stands vacated.

24. No order, as to cost.

JUDGE

Comparing Assistant