AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.408 of 2026

M/s. Rashmi Metaliks Limited	….	**Appellant**
-Versus-		
Union of India, through General Manager, East Coast Railway, Bhubaneswar	….	**Respondent**

Advocates appeared in this case:

For Appellant: Mr. Kishore Datta, Senior Advocate
Mr. Alok Ranjan Mohanty, Advocate
Ms. Sumita Shaw, Advocate
Mr. Chetan Kabra, Advocate

For Respondent: Mr. N. Venkatraman, Addl. Solicitor General
Mr. P.K. Parhi, Deputy Solicitor General
Mr. Biswajit Maharana, Senior Panel Counsel

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

Date of Hearing: 2nd May, 2026 Date of Judgment : 28th July, 2026

HARISH TANDON, CJ.

1. In recent times, a practice has developed at the bar in making a composite application under Articles 226 and 227 of the Constitution of India and the same is registered by assigning the appropriate classification of the subject when different classifications are ascribed

to in working of the category of cases and special assignment is made by the Chief Justice to different Courts. It is a common practice in this Court by assigning the different nomenclature and numbers to an application filed under Article 226 of the Constitution of India, *i.e.*, W.P.(C) and under Article 227 of the Constitution of India, *i.e.*, CMP. The moment a composite application is filed and a particular category is resorted to in registration thereof, it ordinarily goes to a Bench who is assigned the roster/determination to take up such application. It is no longer *res integra* that the Chief Justice is the master of the roster and assigns the category of the cases to be dealt with by the respective Benches and, thus, the usurpation of the powers not expressly assigned is *per se* illegal as the order would be termed as an order without jurisdiction.

2. In an identical situation, this Bench in ***NKC Projects Pvt. Ltd., Haryana Vs. Chief Engineer (Roads-1), Bhubaneswar, 2026 ILR-CUT ONLINE 1081*** held in the following:

> "15. It is well settled that the Chief Justice is the master of the Roster. It segregates the category of cases to be dealt by each of the Hon'ble Judges of the High Court which ipso facto leads to an inescapable inference that category of cases which are not assigned to a particular Judge, cannot be taken up by the said Judge. Once the power under

jurisdiction exercised by each of the Judges is assigned by the Chief Justice, usurpation of power *dehors* such category of cases would relate to an exercise of the jurisdiction without any authority, and, therefore, any order is passed by a Bench having not assigned the Roster/determination is *per se* illegal.

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

3. It leads to an another inescapable perception that in the event the Bench exercises the jurisdiction not assigned to it by the Chief Justice, any order passed is in excess of such jurisdiction. It will also give a leeway to unscrupulous litigants to resort to the forum shopping, which is deprecated in catena of decisions rendered by the Courts of this country. The litigants shall not be permitted to resort to forum non conveniens, nor shall they be permitted to disrupt the jurisdictional framework assigned to the Bench or invite the Court to entertain and pass an order.

4. This is one of the classic examples where a party has taken recourse to the jurisdiction exercised by the Court under Articles 226 and 227 of the Constitution of India and despite the fact that the nature

of the order does not permit maintainability and/or entertainability of an application under Article 226 of the Constitution of India, yet the same is being exercised treating the power of superintendence having ingrained and inhered into the High Court. The sequence of facts discerned from the record is as pure as the sacred water that an order passed by the Senior Civil Judge (Commercial Court) under Section 36(2) of the Commercial Courts Act, 2015, being challenged under Article 226 of the Constitution of India, has been entertained by interfering therewith.

5. The appellant approached the arbitral tribunal raising a dispute capable of being adjudicated upon in terms of the arbitration agreement entered into by and between the parties which culminated into an award. The respondent challenged the said award before the Senior Civil Judge (Commercial Courts), Bhubaneswar in ARBP No.9 of 2024, wherein an application under Section 151 of the Code of Civil Procedure, 1908 (in short, 'the Code') as well as an application under Section 36(2) of the Arbitration and Conciliation Act, 1996 were taken out and registered separately as an Interlocutory Application (I.A.) for the purpose of record. It is pertinent to note that the application under Section 151 of the Code is still pending. The Commercial Court took up

the application under Section 36(2) of the Arbitration and Conciliation Act, 1996 and disposed of the same by granting stay of the execution of the award, subject to the conditions of depositing Rs.69,05,00,000/- (Rupees Sixty-nine Crore and Five Lakh only) in shape of a Demand Draft in the name of the Registrar, Civil Courts, Khordha at Bhubaneswar and the remaining amount of Rs.1638,24,00,000/- (Rupees Sixteen Hundred Thirty-eight Crore and Twenty-four Lakh only) by way of Bank Guarantee(s) issued by a Nationalized Bank. The Union of India challenged the said order by filing combined applications under Articles 226 and 227 of the Constitution of India, whereas the said petition was registered as W.P.(C) No.30590 of 2025, which is assigned to a writ petition under Article 226 of the Constitution of India. By the impugned order, the learned Single Judge set aside the order of the Commercial Court and granted an unconditional stay of the execution until the disposal of an application under Section 34 of the Arbitration and Conciliation Act, 1996 with a consequential direction upon the Commercial Court to dispose of an application under Section 151 of the Code and also to dispose of Section 34 application under the Arbitration and Conciliation Act, 1996.

6. The only point involved in the instant appeal is whether an order passed by a Civil Court is amenable to be challenged under Article 226 of the Constitution of India, more particularly, by issuing a writ of *certiorari*. There has been a considerable deliberation on the separation of the powers enshrined in the above mentioned Articles. Two Judge Bench of the Supreme Court in ***Surya Dev Rai vs. Ram Chander Rai and others*** reported in ***AIR 2003 SC 3044 = 2003 (6) SCC 675***, has an occasion to deal with the same. The Bench traces the history of the writ of *certiorari* from various authoritative documents including the *Corpus Juris Secundum (Vol.14, page 12)*, wherein it is opined that *certiorari* is a writ issued from a superior Court upon an inferior Court or Tribunal commanding the latter to send up the record of a particular case. The Bench also reminded itself from the enlightening observations from *H.W.R. Wade and C.E. Forsyth* defining the *certiorari* to be used to bring up into the High Court the decision of some inferior Tribunal or authority in pursuit of an investigation and in the event, it does not pass the muster of a well settled test, the same is quashed and declared completely invalid. In ***Ryots of Garabandho and other Villages vs. Zamindar of Parlakimedi and another,*** reported in ***AIR 1943 PC 164***, Lord Chancellor Viscount Simon observed that the

ancient writ of *certiorari* in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. It is further held that while exercising *certiorari* jurisdiction, the High Court proceeds on an assumption that the Court which has jurisdiction over a subject matter has the jurisdiction to decide wrongly as well as rightly. In this regard, the High Court would not, therefore, for the purpose of *certiorari* assign to itself the role of an appellate Court and steps into re-appreciating or evaluating the evidence and substitute its findings in place of those arrived at by the inferior Court. The said Bench further took note of various judgments of the Apex Court rendered in earlier point of time and held that there is no manner of doubt that the orders and/or proceedings of the judicial Court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution in the following:

> "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 No.46 of 1999 with effect from 01.07.2002 in Section 115 of 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 the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

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

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the 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 above said 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 there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the *lis*.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation 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."

7. At a later point of time in case of ***Radhey Shyam and another vs. Chhabi Nath and others*** reported in ***(2009) 5 SCC 616***, a coordinate Bench of the Apex Court doubted the ratio of the law laid down in ***Surya Dev Rai*** *(supra),* more particularly, the power to issue a writ of *certiorari* upon the inferior Courts when challenge is made to its order. A Three Judge Bench of the Apex Court in ***Radhey Shyam and another vs. Chhabi Nath and others*** reported in ***AIR 2015 SC 3269 = (2015) 5 SCC 423*** did not accept the proposition of law expounded in ***Surya Dev Rai (supra)*** on the scope or jurisdiction of the High Court in entertaining the writ in the nature of *certiorari* against an order passed by a Civil Court in a civil proceedings and held in an unequivocal terms that Article 226 is not an appropriate remedy to a litigant in this regard. The enlightening observations made by this Court in ***NKC Projects Pvt.***

Ltd., Haryana (supra) *as quoted from paragraph 25 of* ***Radhey Shyam*** *(supra)* are reproduced hereunder:

> "25. Accordingly, we answer the question referred as follows:
>
> (i) Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.
>
> (ii) Jurisdiction under Article 227 is distinct from jurisdiction under Article 226. Contrary view in *Surya Dev Rai* is overruled."

8. This Bench after taking note of the judgments as adumbrated in ***NKC Projects Pvt. Ltd., Haryana (supra)*** held that a three Judge Bench of the Apex Court in ***Radhey Shyam (supra)*** has created a complete embargo in entertaining an application under Article 226 of the Constitution of India challenging the order passed by the Civil Court in a civil proceeding in the following:

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

9. The law enunciated in the report leaves no ambiguity in our mind that the writ of *certiorari* against an order passed by the Civil

Court in a civil proceeding is not an appropriate remedy and the High Court is denuded of its power to exercise the *certiorari* jurisdiction.

10. In order to complete the sequel of reasoning as given hereinabove, an ancillary point arose whether the Commercial Court established under the Commercial Courts Act, 2015 has a trapping of civil Court and the proceeding initiated before it would be recorded as civil proceeding. The object and purpose of establishing the Commercial Courts across the country was envisioned for a speedy disposal of the high value commercial disputes involving the complex facts and the question of law. The Law Commission of India in its 188th Report recommended the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division. A Bill was introduced and passed by the Lok Sabha. While the Bill was placed before the Rajya Sabha, certain issues were raised, which needed threadbare examination. Hence, the matter was again referred to the Law Commission. In 253rd Report, the Law Commission recommended for establishment of the Commercial Courts, Commercial Division and Commercial Appellate Division in the High Court for disposal of the commercial disputes. On the basis thereof, the Bill was again passed in both the Houses of Parliament and took a shape of legislation, which

received the assent of the President of India and was published in the Gazette of India to come into force on and from 23rd October, 2015. Section 6 of the said Act encapsulated the jurisdiction of the Commercial Courts to try all suits, an application relating to the commercial dispute of a specified value arising out of the entire territory of the State and make the provision of Sections 16 to 20 of the Code applicable in this regard. Thus, a power is conferred upon the Commercial Courts to try a suit of a specified value, which is in ordinary sense is tried by a Civil Court and the proceedings of such nature is regarded as "civil proceeding". Thus, the Commercial Court has a trapping of a Civil Court and the proceeding initiated before it, is regarded as "civil proceeding". Such being the spirit of the Act, the order passed by the Commercial Court is regarded as an order of a Civil Court and in view of the embargo created in the larger Bench of the Apex Court in ***Radhey Shyam (supra)*** a writ of *certiorari* under Article 226 of the Constitution of India is not appropriate and/or competent. The adjudication made by the Commercial Court has a trapping of a decree executable under the provisions of the Code, as amended in terms of Section 16 thereof, leads to an inescapable conclusion that it has all the trapping of a civil Court.

11. We are conscious that Section 8 creates a bar to a revisional application or a petition against the interlocutory order but it does not take away the powers of the High Court under Article 227 of the Constitution of India, which is held by us in ***NKC Projects Pvt. Ltd., Haryana*** *(supra)* in the following:

> "18. Since the appellant has invited our attention to the merit of the impugned order, the impugned order is hereby set aside. The writ petition is revived. We, therefore, direct the Registry to assign the appropriate number as is assigned to an application under Article 227 of the Constitution of India. After undertaking such exercise, the instant petition shall be placed before a Bench having a Roster to take an application under Article 227 of the Constitution of India. We expect and hope that the moment the matter is listed before the appropriate Bench having the requisite Roster, precedence shall be given to the instant matter in securing the disposal thereof."

12. In view of the discussions as above, the judgment/order impugned in the instant appeal is hereby set aside. The application under Articles 226 and 227 of the Constitution of India is restored to its file. The Registry is directed to re-register the said application by assigning appropriate nomenclature as given to an application under Article 227 of the Constitution of India and shall place the same before an appropriate Bench having roster in this regard. It is made clear that the Bench having roster/determination to take up an application under

Article 227 of the Constitution of India shall decide the same independently on merit without being influenced by the observations made by the impugned order as well as in this judgment and it is expected that the same shall be disposed of as expeditiously as possible.

I agree.

(Murahari Sri Raman)
Judge

(Harish Tandon)
Chief Justice

S.K. Jena/Sr. Secy.

Signature Not Verified
Digitally Signed
Signed by: SANJAY KUMAR JENA
Designation: Asst. Registrar-cum-Sr. Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 28-Jul-2026 15:01:03