

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 1515 OF 2026

PANJI GRIHA NIRMAN PRIVATE LIMITED & OTHERS

...PETITIONERS

-VERSUS-

AYAN SADHUKHAN & OTHERS

...OPPOSITE PARTIES

For the Petitioners	: Mr. Soumendra Nath Mookherjee, Ld. Sr. Adv., Mr. Jishnu Chowdhury, Ld. Sr. Adv. Mr. Soumyadeb Sinha, Adv. Mr. Yash Singhi, Adv. Ms. Sanskriti Agarwal, Adv. Ms. Abhismita Goswami, Adv. Ms. Vidhi Birmecha, Adv. Mr. Debjit Mukherjee, Adv. Mr. Snehashish Sen, Adv.
For the Opposite Parties	: Mr. Srijib Chakraborty, Adv. Mr. Tanmoy Mukherjee, Adv. Mr. Chandra Nath Sarkar, Adv.

Heard on : 10.08.2026

Judgment on : 07.09.2026

OM NARAYAN RAI, J.:-

1. This revisional application takes exception to an order dated April 23, 2026 passed by the learned Civil Judge (Senior Division), 1st Court at Baruipur in Title Suit No. 105 of 2026 whereby the learned Court has dismissed the petitioner no. 1's application for recall/vacation of the ad interim order of injunction passed on February 21, 2026.

FACTUAL MATRIX:

2. Shorn of meticulous details, the facts relevant for adjudication of the present revisional application, as may be gathered from the material on record, are as follows:-

- a. The opposite party nos. 1 and 2 have instituted Title Suit No.105 of 2026 before the learned Civil Judge (Senior Division), 1st Court at Baruipur, District – South 24 Parganas praying *inter alia* for decrees for declaration and partition.
- b. In the said suit, the opposite parties filed an application for injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908¹ and pressed the same for *ex-parte* ad interim reliefs on February 21, 2026.
- c. The learned Trial Court found that there was a caveat note on the file by the *Sheristadar* sans his signature and that the caveat pertained to a different Dag Number not related to the suit property. The learned Trial Court therefore proceeded to consider the application for injunction for *ex-parte* ad interim order and directed the parties to maintain *status quo in* respect of the suit properties as regards the nature, character and possession thereof as on that day.
- d. Thereafter, the petitioner no.1 filed an application praying for recalling and/or vacating the *ex-parte* ad interim order directing the parties to maintain *status quo* while asserting that the *Sheristadar* of the Court had committed a mistake by noting an entirely different caveat (bearing No.1885 of 2025) filed by another person in respect of LR Dag No. 1365 and the caveat registered by the petitioners were missed. It was contended that in view of such lapse the petitioners were deprived of his statutory right of hearing before passing of the said interim order.
- e. When the said application was pressed, the learned Trial Court posted to the same for hearing on a later date.
- f. Since hearing of the petitioner's application for recalling and/or vacating the said *ex-parte* ad interim order was postponed by the learned Trial Court resulting in continuance of the said *ex parte* ad interim order, the petitioners approached this Court by filing C.O.953 of 2026 praying for setting aside of the *ex parte* ad interim order dated February 21, 2026. The said revisional application was disposed of by this Court observing as follows:-

“10. That being so the application for recalling of the order dated February 27, 2026, that has already been filed before the learned Trial Court must be heard forthwith. Accordingly the learned Trial Court is requested to take up the application for recalling (that had been filed before it on February 27, 2026) *peremptorily*.

11. The petitioners shall be entitled to file an application for putting up of the records and to pray for preponment of the date fixed earlier, upon notice to the learned Advocates appearing for the opposite parties.

12. The learned Trial Court shall take up such application and decide the same in the light of the judgment of the Hon'ble Division Bench in the case of **Sukumar Roy (supra)**.

¹ Hereafter “the Code”

13. *It is noticed that the learned Trial Court has while passing the order of injunction dealt with the aspect of lodgment of caveat and has found that caveat no. 1885 of 2025 had been noted by the Sherestadar on the file of the Court. It appears that there was no note as regards caveat no. 1897 of 2025 that is alleged to have been filed by the petitioners herein.*

14. *The learned Trial Court has noted that caveat no. 1885 of 2025, note whereof was made by the Sherestadar of the Court 6 pertained to a different property to which the suit does not relate.*

15. *In case, the learned Trial Court is satisfied that grounds have been made out for recalling of the order and caveat had indeed been lodged in accordance with law, then the learned Trial Court shall take up the application for injunction and hear the same at least for examining the question of passing ad-interim order in the presence of the defendants to the suit i.e. the petitioners herein immediately.*

16. *The learned Trial Court shall ensure that the entire exercise is concluded as expeditiously as possible and preferably within a period of ten days from the date of filing of the application for putting up of the records.*

17. *In case the Court i.e., the Court of the learned Civil Judge (Senior Division), Baruipur, 24-Parganas (South) is vacant, the learned Judge-in-Charge of the said Court shall take up the matter and decide the matters by passing appropriate orders in terms of this order.”*

g. The petitioners, thereafter, filed an application before the learned Trial Court and the record was put up before the learned Trial Court on April 06, 2026. The matter was thereafter heard and the impugned order was passed on April 23, 2026 thereby rejecting the petitioners’ application for recalling and/or vacating the said *ex-parte* ad interim order and extending the initial ad interim order till the next date.

h. Feeling aggrieved thereby, the petitioners have approached this Court again by way of the present revisional application.

3. Although a preliminary objection as to maintainability was raised by the opposite parties, the parties were invited to argue on the preliminary objection as well as the merits of the matter. Parties were accordingly heard, the hearing was concluded and judgment was reserved on August 03, 2026. On the very next day i.e., on August 04, 2026, the matter was mentioned by Mr. Chowdhury, learned Senior Advocate and it was submitted that he had missed to argue one point and he wished to rely on a judgment in support thereof. Since the matter had been freshly reserved for judgment, considering his request the matter was directed to be listed under the heading “To Be Mentioned” on August 05, 2026. On the said day, the matter was fixed for hearing again on August 10, 2026. The matter was accordingly heard on August 10, 2026 and hearing was concluded.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. A brief summary of the submissions made on behalf of the petitioners, is as follows:-
- a. The learned Trial Court has committed a serious error in passing the order impugned by holding that the caveat lodged by the petitioners was invalid.
 - b. Relying on a judgment of the Hon'ble Division Bench of this Hon'ble Court in the case of ***Sukumar Roy & Others vs. Pratul Kumar Roy***², it was submitted that once it is pointed out to the Court that a lodged caveat has escaped its notice, then the only recourse left is to recall the order forthwith and rehear the matter on contest. Another judgment rendered by a Co-ordinate Bench of this Court in the case of ***Chanchal Bhattacharjee vs. Srikumar Bhattacharjee***³ was also cited for the same proposition.
 - c. It was next submitted that the learned Trial Court has misinterpreted the provisions of Section 148A of the Code and held that a caveat must be accompanied by proof of delivery. It was submitted that lodging a caveat would be an impossibility of sorts if the same is mandatorily required to be filed with a proof of delivery.
 - d. Rule 40A of the Civil Rules and Orders of the High Court, Calcutta was pressed into service to demonstrate that a caveat can be lodged without proof of delivery.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

5. A brief summary of the submissions made on behalf of the opposite parties, is as follows:-
- a. The present revisional application is not maintainable inasmuch as it is directed against a combined order passed by the learned Trial Court thereby not only refusing to vacate the order of injunction granted earlier but also extending the initial order of injunction.
 - b. The petitioners' application is essentially one under Order 39 Rule 4 of the Code and therefore any order passed on that application would be appealable under Order 43 Rule 1(r) of the Code. Similarly, the order continuing/extending the initial order of injunction would also be appealable under the same provision.
 - c. The application for vacating an order of injunction on the ground of non-service of notice despite lodgement of caveat would satisfy the aspect of undue hardship under the second proviso to Order 39 Rule 4 of the Code. Paragraph 11 of the recalling application was placed to show that the petitioners have sought

² MANU/WB/0430/1985

³ 2014 (4) CHN (CAL) 263

vacation of the order of injunction on the ground that continuance of the injunction order was causing prejudice to the petitioners and was adversely affecting its lawful commercial activities in relation to the suit property.

- d. The petitioners' case is not only based on procedural irregularity but is one which also seeks substantive relief of vacation of injunction on the ground that the petitioners have been prejudiced by the continuance of an order of injunction.
- e. A judgment of the Hon'ble Supreme Court in the case of **A. Venkatasubbiah Naidu vs. S. Chellappan & Others**⁴ was cited to contend that once the petitioners' application for vacating the order of injunction was dealt with and decided on merits the only remedy available was an appeal under Order 43 Rule 1 of the Code and order passed in such cases should not be ordinarily tinkered with under Article 227 of the Constitution of India. It was stressed that in that case the Hon'ble Supreme Court re-imposed the order of *status quo* that had been vacated by the High Court in exercise of its powers under Article 227 of the Constitution of India.
- f. **Gayatri Chetna Foundation vs. Manoj Joshi & Others**⁵, a judgment rendered by an Hon'ble Division Bench of this Court was relied on to demonstrate that an order of injunction passed by a Court while overlooking a caveat that had been lodged was interfered with in appeal by the Hon'ble Division Bench in exercise of powers under Order 43 Rule 1(r) of the Code.
- g. A judgment of a Co-ordinate Bench of this Court in the case of **J.M. Financial Asset Reconstruction Company Limited vs. Abhinandan Holdings Private Limited & Another**⁶ was placed to contend that in a similar situation, this Court has refused to entertain an application under Article 227 of the Constitution of India. It was asserted that the said judgment was rendered considering the mandate of the Hon'ble Supreme Court in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society & Others**⁷, that in cases where proceedings before the Civil Courts are involved, availability of alternative remedy under the Code may have to be construed as a near total bar.
- h. It cannot be said that the learned Trial Court lacks inherent jurisdiction to pass any *ex-parte* order in cases where caveat has been lodged if the case involves

⁴ (2000) 7 SCC 695

⁵ 2025 SCC OnLine Cal 3668

⁶ C.O. 3376 of 2023, decided on August 02, 2024

⁷ (2019) 9 SCC 538

extreme urgency and time spent in issuance of notice would leave the plaintiff remediless or render the prayer for injunction infructuous. An example of a case for demolition was cited to assert that if an order of demolition is to be carried out the very next day, the prayer for *ex-parte* injunction would still be granted despite lodgement of caveat.

- i. ***Reserve Bank of India Employees Association & Another vs. The Reserve Bank of India & Others***⁸ rendered by the Hon'ble High Court of Andhra Pradesh was cited to assert that the order passed by a Court without giving notice to a caveator would not be a nullity.
- j. Another judgment of the Hon'ble Gauhati High Court in the case of ***Airport Authority of India vs. M/s. Paradise Hotel and Restaurant***⁹ was pressed into service to contend that an application under Article 227 of the Constitution of India cannot be entertained against any order of injunction passed without service of notice on the defendants in the suit.
- k. The learned Trial Court has passed the order on interpretation of the amended provisions of Section 148A of the Code and it is a plausible interpretation.
- l. It was submitted that in any case the order cannot be said to be either patently perverse, nor can it be said to have been passed by a Court lacking inherent jurisdiction.
- m. The appellate remedy would be more efficacious for the petitioners in the present case, inasmuch as this Court, exercising supervisory jurisdiction under Article 227 of the Constitution of India would not interfere with an order to correct a mere error of law or fact, even if it is assumed that the order is otherwise erroneous.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 6. The petitioners re-joined with the following submissions:-
 - a. The power of recall is inherent in every Court and it was that power of the Court which was invoked by the petitioners in the case at hand.
 - b. ***Gayatri Chetna Foundation*** (supra) was relied on to assert that once it is demonstrated that it is mandatory for the Court to direct prior service of notice on the caveator before passing any order and an interim order passed without such direction of prior service would be without jurisdiction. Since the order itself is without jurisdiction, the application under Article 227 is maintainable.

⁸ AIR 1981 ANDHRA PRADESH 246

⁹ AIR 2002 GAUHATI 146

- c. A judgment of the Hon'ble Gauhati High Court in the case of ***M/s. Contemporary Target Private Limited & Others vs. M/s. M.B. Enterprises & Others***¹⁰ was relied on to contend that a High Court can exercise jurisdiction under Article 227 of the Constitution of India in cases where there is a violation of fundamental basic principles of justice and fairplay or where a patent or flagrant error in procedure of law has crept in or where the order passed results in manifest injustice despite existence of alternative remedy. It was asserted that the judgment in the case of ***Reserve Bank of India Employees Association & Another*** (supra) was distinguished by the Hon'ble Gauhati High Court and it was held that an order passed without notice to the caveator will be without jurisdiction.
- d. The petitioners had invited the learned Trial Court to exercise its power of processual review (or procedural review) and the learned Trial Court was not invited to assess the worth of the order of injunction on merits. The prayer made in the application for recall makes it clear that recall of the order had been sought for on the ground that the same had been passed in breach of the mandatory duty of the Court under Section 148A of the Code.
- e. ***Grindlays Bank Limited vs. Central Government Industrial Tribunal & Others***¹¹ was pressed into service to assert that the expression "review" is used in two distinct senses and the power of procedural review is inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it.
- f. ***Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Limited & Another***¹² was cited to demonstrate that procedural review belongs to a different category of power which is invoked by Court when the Court finds that it has committed a procedural illegality which goes to the root of the matter.
- g. Section 148A of the Code casts dual obligations - one upon the caveator and the other upon the Court. In the case at hand, there has been a failure of duty cast on Court.
- h. Provisions of Order 39 Rule 4 of the Code are invocable in cases where a person is dissatisfied with the order on merits and not for failure of Court to discharge its duty.
- i. A judgment of the Hon'ble Supreme Court in the case of ***Mahadev Govind Gharge & Others vs. Special Land Acquisition Officer, Upper Krishna***

¹⁰ (1994) 1 Gauhati Law Reports 259

¹¹ 1980 (Supp) SCC 420

¹² (2005) 13 SCC 777

Project, Jamkhandi, Karnataka¹³ was cited to assert that in terms of Section 148A of the Code a caveator has a right to be heard mandatorily for the purposes of passing an interlocutory order.

j. Veerabhadrapa vs. Mayappa¹⁴ - a case decided by the Hon'ble High Court at Karnataka was cited to assert that an order of injunction passed under Section 151 of the Code cannot be challenged in appeal under Order 43 rule 1(r) of the Code.

k. Rajesh Kumar Pandey & Another vs. M/s. Nilma Vinimay Private Limited¹⁵ was cited to demonstrate that power under Article 227 of the Constitution of India can be exercised by the High Court in cases where the orders of Tribunals or Courts subordinate to it suffer from patent perversity or where there has been gross and manifest failure of justice or principles of natural justice have been flouted.

SURREJOINDER BY THE OPPOSITE PARTIES:

7. The opposite parties made the following submissions in response to the petitioners' rejoinder arguments:-

a. An unreported judgment of a Co-ordinate Bench of this Court in the case of **Yajur Fibres Limited & Another vs. Dharmendra Tiwari & Others**¹⁶ was cited to assert that even if an order of injunction is passed under Section 151 of the Code and such order touches the merits of the case, the same must be assailed by way of an appeal under Order 43 Rule 1(r) of the Code.

b. Another unreported judgment of another coordinate Bench of this Court in the case of **Smt. Suchanda Jana nee Ghosh alias Tultuli vs. Sri Samiran Chandra Ghosh & Others**¹⁷ was cited to contend that if a subsisting interim order is modified, the resultant order will be appealable and an application under Article 227 of the Constitution of India would not lie.

c. Paragraph 13 of the petitioners' recalling application was shown to argue that the petitioners have themselves asserted their right to file a detailed affidavit in reply to the injunction application. Such right is still available to them.

d. On a query from the Court as regards the learned Trial Court's finding that the caveat lodged by the petitioners was invalid, it was submitted that the order impugned was passed keeping in view the recent amendment effected to Section

¹³ (2011) 6 SCC 321

¹⁴ I.L.R. 1993 KAR 161

¹⁵ C.O. 4549 of 2016, decided on December 23, 2016

¹⁶ C.O. 3262 of 2022, decided on September 18, 2023

¹⁷ C.O. 2571 of 2016, decided on July 11, 2017

148A of the Code and the same is neither perverse nor suffers from lack of jurisdiction. The learned Court has given its reasons for such finding and the same are not perverse.

- e. Even if it is assumed to be erroneous that would not make it vulnerable under Article 227 of the Constitution of India and the petitioners should not be permitted to jump a forum.

ANALYSIS & DECISION:

8. The case at hand could be dealt with, without much ado, by following the judgment of the Hon'ble Division Bench of this Court in the case of **Sukumar Roy** (supra) but since an issue as regards the maintainability of the revisional application under Article 227 of the Constitution of India has been raised, that needs to be addressed first.
9. The precise objection is that the impugned order has a dual character, both of which render it appealable under Order 43 Rule 1(r) of the Code and that the application is actually one under Order 39 Rule 4 of the Code inasmuch as the prayers made therein, if granted, would lead to the vacation of the interim order of injunction.
10. In such a situation, the provisions of Order 39 Rule 4 of the Code need to be noted:-

*"4. **Order for injunction may be discharged, varied or set aside.**— Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:*

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."

11. The text of the main part of Order 39 Rule 4 of the Code indicates that the Court can be approached by way of an application for discharge or variation or setting aside of an order of injunction by "*any party dissatisfied with such order*".
12. The two provisos provide for two different situations. The first proviso deals with a situation where no notice is served upon the opposite party and the party in whose favour the order of injunction has been passed has knowingly made a false or misleading statement in relation to a material particular. The second proviso deals

with a situation where both parties have been heard. In terms of the second proviso, the Court can be approached by a party for discharging or varying or setting aside of the order of injunction only if the same is necessitated by a change in the circumstances or the order has caused undue hardship to that party.

13. It is true that the application filed by the petitioners sought for recall/vacation of the order of injunction on the ground that the same had been passed in violation of the provisions of Section 148A of the Code but that by itself would not take the application out of the bracket of Order 39 Rule 4 of the Code.
14. The expression “*dissatisfied with such order*” used in the main part of Order 39 Rule 4 is broad enough to encompass all grounds on which a party could be dissatisfied with the order of injunction. The petitioners contended that the expression “*dissatisfied with such order*” would mean dissatisfaction with the order of injunction itself and not with the faulty procedure followed by the Court in passing the order of injunction. It was contended that failure of Court to issue notice despite lodgement of caveat could not be made the subject matter of enquiry under Order 39 Rule 4 of the Code. While the two provisos to Order 39 Rule 4 of the Code lend considerable support to the assertion that the enquiry contemplated by the said Rule is directed to the continuance, variation or setting aside of the injunction itself, rather than to the procedural validity of the proceeding culminating in the order granting the injunction, the main part of the Rule is wide enough to cover all situations.
15. It is well settled that the provisos cannot be read in a manner that would whittle down the main enactment or the main provision. The Hon’ble Supreme Court has laid down the law on this point with absolute clarity in the case of **S. Sundaram Pillai & Others vs. V.R. Pattabiraman & Others**¹⁸ in the following words:-

“27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.”

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

¹⁸ (1985) 1 SCC 591

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

(Emphasis supplied)

16. Keeping the above legal position in mind it cannot be said that Order 39 Rule 4 of the Code would not encompass recall of an order of injunction on the ground of procedural fallacies.
17. The judgments of the Hon’ble Supreme Court in the case of **Grindlays Bank Limited** (supra) and **Kapra Mazdoor Ekta Union** (supra) where the Hon’ble Supreme Court distinguished between the powers of procedural review and review on merits cannot help the petitioners in the case at hand. In the said cases, the Hon’ble Supreme Court clarified that the power of procedural review inheres in every Court or Tribunal and is exercisable *ex debito justitiae*, however, the said cases may not be applicable to the case at hand inasmuch as the same pertain to Industrial Tribunals which did not have a provision as widely worded as Order 39 Rule 4 of the Code. In such context the following observations in the case of **Kapra Mazdoor Ekta Union** (supra) which relied on **Grindlays Bank Limited** (supra) may be noted:-

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is

liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

(Emphasis supplied)

18. The underlined portions would at once make it clear that what was being considered was the difference between substantive review on merits and a procedural review. The provisions of substantive review as in Order 47 of the Code are so worded that the same make such remedy available only in certain specific circumstances. The same do not include the grounds required to be shown for a procedural review viz. mistake of Court etc. Thus in appropriate situations the Court would be entitled to invoke inherent powers if the ground on which the power is sought to be invoked is not available to be asserted through any other provision in the Code.
19. But if a wide provision that subsumes even such grounds exists, would it still be open to the Court to use inherent powers? It is well settled that where an express provision exists in the Code which completely exhausts the scope of using inherent power then Section 151 of the Code cannot be employed to grant the same relief by the Court. Inherent powers under Section 151 of the Code can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under Code¹⁹.
20. Where the relief sought is to recall/vacate an order of injunction, which, in effect, means to set aside an existing injunction, Order 39 Rule 4 of the Code expressly supplies that power, irrespective of whether the ground is substantive or procedural. The procedural character, in the facts of this case does not take the resulting order outside Order 39 Rule 4 of the Code.
21. The matter can be looked at from a different angle. Suppose the learned Trial Court had for the same reason as in this case not heeded to the caveat and refused to pass an order of injunction. In such a case would the petitioners have come up with an application for recalling of the order? The answer will be in the negative. The reason is simple; the petitioners would then not have been dissatisfied with the order. Therefore dissatisfaction with the order is indeed material.

¹⁹ Ram Prakash Agarwal vs. Gopi Krishan, (2013) 11 SCC 296

22. There is yet another way to look at the matter. It is well settled that a person who is aggrieved by an order of injunction passed against him has three remedies and he can choose any one of them. He can prefer an appeal under Order 43 Rule 1(r) of the Code or file an application under Order 39 Rule 4 thereof for vacation of the injunction or contest the ad interim injunction by filing written objection to the application for temporary injunction and get the same vacated after final hearing. It may be noticed that in **Gayatri Chetna Foundation** (supra) the appellant had preferred appeal against the *ex-parte* ad interim order of injunction and one of the principal grounds urged was non service of notice despite lodgement of caveat. The Hon'ble Division Bench allowed the appeal on that ground alone. If non-service of notice despite caveat can be a ground of attack in an appeal under Order 43 Rule 1(r) of the Code, there is no reason why the same cannot be a ground for vacating an order of injunction under Order 39 Rule 4 of the Code.
23. It is a different question altogether as to whether the learned Trial Court was justified in refusing to recall the order of injunction or vacate the injunction on the ground that found favour with it.
24. That being the case, it cannot be held that the application for recalling/vacating the order of injunction was not one under Order 39 Rule 4 of the Code. Once it is so held, the order impugned becomes one passed under the provisions of Order 39 Rule 4 of the Code and the appellate remedy under Order 43 Rule 1(r) of the Code would be required to be resorted to by the petitioners to assail the same.
25. The Hon'ble Division Bench authority of **Sukumar Roy** (supra) relied on by the petitioners could have been applied by this Court only if this Court could entertain the challenge to the order impugned, however, in view of the mandate of the Hon'ble Supreme Court in the case of **A. Venkatasubbiah Naidu** (supra) and **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai** (supra), this Court would not entertain such a challenge. While the core legal position remains absolutely unshaken — that the plenary constitutional powers under Articles 226 and 227 of the Constitution of India are untrammelled by any legislation — the Hon'ble Supreme Court has repeatedly emphasised that jurisdiction under Article 227 should not be exercised when an alternative appellate remedy is available before the Civil Courts. The words of the Hon'ble Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai** (supra) are quite telling and leave no room for ambiguity in such regard. The same are reproduced hereunder:-

“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. Chhabhi Nath [Radhey Shyam v. Chhabhi 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”.

(Emphasis supplied)

26. Furthermore, in the case of **Sukumar Roy** (supra) the issue of maintainability of the revisional application was not raised before the Court. Moreover, while the Hon'ble Division Bench made it clear that the only option left with the relevant Court was to recall the order passed in ignorance of a caveat it cannot be interpreted to mean that such recall must necessarily be under Section 151 of the Code and not under Order 39 Rule 4 of the Code. This Court is conscious of the fact that the expression “recall” has not been used in order 39 Rule 4 of the Code but then having regard to the aforementioned discussion as regards the scope of Order 39 Rule 4 and Section 151 of the Code the same would make little difference in the facts of this case. After all, it is well settled that a judgment is not to be read like a statue.
27. **Chanchal Bhattacharjee** (supra) cannot aid the petitioners inasmuch as in that case a Co-ordinate Bench of this Court recalled the order passed by it upon it being brought to its notice that the order had been passed without notice to the caveator. In the case at hand, it is not that this Court is rejecting the petitioners' prayer for recall on merits. All that this Court is saying is that the strict hierarchy of Civil Courts must be respected in view of the mandate of the Hon'ble Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai** (supra) and the competent Appellate Court under Order 43 Rule 1(r) of the Code be approached for appropriate relief.
28. **M/s. Contemporary Target Private Limited & Others** (supra) holds that an application under Article 227 of the Constitution of India can be maintained in cases where the Court has passed orders without jurisdiction or in flagrant violation of fundamental principles of justice and fair play. **Rajesh Kumar Pandey & Another** (supra) also holds similarly. There is no quarrel with the propositions

held in the said judgments but then, as already indicated hereinabove, going by the legal position as it now obtains, keeping in view the judgment of the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai*** (supra), the High Court should be too slow to interfere with orders passed by Civil Courts, if appellate forum is available. In the case at hand, an appellate forum is available and the petitioners are not remediless.

- 29. *Mahadev Govind Gharge & Others*** (supra) is a salutary authority for the proposition that a caveator has a right to be heard mandatorily, however, the same would be relevant only when the Court assesses the merits of the petitioners' case as regards non-service of notice, as run in the recalling/vacating application. In the present case, this Court has stopped its enquiry at the entry point and has refrained from delving into the merits.
- 30. *Veerabhadrapa*** (supra) is an authority for the proposition that an order passed under Section 151 of the Code is not appealable either under Order 43 Rule 1(r) or under Section 104 thereof. The proposition is beyond doubt but then for it to apply, the relevant order, whether of grant of injunction or refusal thereof, must be under Section 151 of the Code. As already indicated hereinabove, an order can be said to be one under Section 151 of the Code if the same relief cannot be obtained under any other express or implied provision of the Code. Such is not the case at hand.
- 31. In *J.M. Financial Asset Reconstruction Company Limited*** (supra), this Court has relied on ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai*** (supra) and refused to entertain a revisional application against order passed on an application under Section 151 of the Code by holding *inter alia* that “for deciding as to whether the order impugned is an appealable one, the Court should look into the nature of relief sought for and the order passed thereon rather than the form of the application”. The aforesaid observation clarifies that the ultimate relief and the order passed thereon would be the deciding factor. In the case at hand the ultimate relief sought for was recalling/vacating the injunction and the order passed thereof is refusal to do so. The same squarely fall under Order 39 Rule 4 of the Code.
- 32. *Reserve Bank of India Employees Association & Another*** (supra) holds that the order passed by a Court without giving a notice to the caveator cannot be treated as a nullity. The said judgment is not relevant for the present purpose as this Court is not entering into the merits of the petitioners' application for recall.
- 33. *Airport Authority of India*** (supra) reveals that the Court refused to exercise its jurisdiction either under Article 227 of the Constitution of India or under Section

115 of the Code in view of availability of alternative remedy of appeal following **A. Venkatasubbiah Naidu** (supra).

- 34. Smt. Suchanda Jana** (supra) and **Yajur Fibres Limited** (supra) reiterate that no matter how an application is captioned, if it is in substance an application in the nature of one either under Order 39 Rules 1 and 2 or Order 39 Rule 4 of the Code, an order passed thereon would be appealable under Order 43 Rule 1(r) thereof and this Court would not entertain a challenge to such order under Article 227 of the Constitution of India.
- 35.** In the instant case, this Court has found that the impugned order has been passed on an application that is covered by the width of Order 39 Rule 4 of the Code and as such the same is appealable under Order 43 Rule 1(r) of the Code.

CONCLUSION:

- 36.** For all the reasons aforesaid, this revisional application is not entertained. The petitioners shall be free to approach the appropriate Appellate Court in accordance with law. It is noticed that the present revisional application has been filed within the timeframe in which an appeal, if preferred, would have been within limitation. Such being the position, if the petitioners file an appeal within a week from date the delay in preferring appeal shall stand condoned and the appeal shall be treated as within time. The learned Appellate Court is requested to dispose of the appeal expeditiously and preferably within a fortnight from the date of filing thereof. In case the petitioners are unable to file the appeal within the period of a week, the petitioners will be entitled to exclusion of the period of limitation of the entire duration during which the present revisional application remained pending. Needless to mention that this Court has not gone into the merits of the petitioners' application for recalling/vacating the order of injunction or the validity of the caveat lodged by the petitioners. Consequently, all points shall remain open to be urged before and decided by the learned Appellate Court.
- 37.** C.O. 1515 of 2026 stands disposed of with the above observations. No costs.
- 38.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)