Karnataka High Court Gurushanth Pattedar vs Mahaboob Shahi Kulburga Mills And ... on 30 May, 2005 Equivalent citations: AIR 2005 Kant 377, ILR 2005 KAR 2503, 2005 (6) KarLJ 270 Author: N Sodhi Bench: N Sodhi, B Padmaraj, P V Shetty, K Manjunath, H Ramesh ORDER PASSED BY A LEARNED SINGLE JUDGE IN A PETITION FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA IS APPEALABLE UNDER SECTION 4 OF THE KARNATAKA HIGH COURT'S ACT- HELD- The Legislature may have intended to provide for a right of appeal but in its wisdow did not amend Section 4 of the Act which is the only provision providing for a right of appeal and this section continues to provide for an appeal against the decision of a single Judge only in the exercise of his original jurisdiction. Since no such amendment has been made in Section 4, the right of appeal in the case of an order passed by a learned single Judge under Article 227 of the Constitution cannot be inferred. Therefore it is held that an appeal, has been provided against an order of a learned single Judge only when it is passed in the exercise of his original jurisdiction i.e. when he deals with a petition under Clause (1) of Article 226 of the Constitution. The right of appeal, is a statutory right and where the statute has provided for an appeal only against an order of a single Judge passed in exercise of his original jurisdiction it has to be held that no appeal would lie against an order passed by him in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Neither the Rules nor the forms prescribed by the High Court could override or control the provisions of Section 4 of the Act which alone provides for an intra-court appeal only against the order passed in exercise of original jurisdiction. Moreover, Rules 2 and 26 of the writ proceedings Rules do not provide for an appeal against an order of a learned single Judge in the exercise of supervisory jurisdiction. It is held that the decision in Kalpana Theatre's case [AIR 1995 KAR 426] is the correct law and the decision of the Full Bench in Ritz Hotel's case [1996(7) KLJ 600] is no longer good law. Intra-Court appeal lies only against the order of the learned single Judge passed in the exercise of its original jurisdiction and not in the exercise of supervisory jurisdiction under Article 227 of the constitution. Held: It is needless to point out that Article 227 of the Constitution confers power of superintendence over all Courts and Tribunals throughout the territories in relation to which the High Court exercises jurisdiction and such power of superintendence is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. It is equally needless to point out that there is difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227 of the Constitution. The difference between these two articles of the Constitution was well brought out in the case of Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr. reported in AIR 1986 SC 1272. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original, but only supervisory. The power under Article 227 is intended to be used for the purpose of keeping subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors. Though the distinction between the two jurisdictions under Articles 226 and 227 of the

Constitution is very clear in the sense that one is in exercise of original jurisdiction of the High Court while the other is not original, but only supervisory, it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution. Be that as it may, the fact remains that the writ of certiorari under Article 226 of the Constitution is a exercise of its original jurisdiction by the High Court whereas under Article 227 of the Constitution, the High Court will be exercising its supervisory jurisdiction and not a original jurisdiction. As I have already indicated, in terms of Section 4 of the Karnataka High Court Act, an appeal is provided by way of intra-Court appeal against the order of the learned single Judge in the exercise of its original jurisdiction and not in the exercise of its supervisory jurisdiction. In the case of Sadhana Lodh. v. National Insurance Co. Ltd., reported in 2003 AIR SCW 930, the three Judge Bench of the Hon'ble Supreme Court has clearly observed that where remedy for filing a Revision before the High Court under Section 115 of CPC has been expressly barred by the State enactment, only in such case a petition under Article 227 of the Constitution would lie and, not under Article 226 of the Constitution. In fact as a matter of illustration, it has been observed therein that where a Trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing Revision under Section 115 of CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 of CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution. This being the position of law, there cannot be any appeal against the order of the learned single Judge passed in the exercise of its supervisory jurisdiction. It may be stated that the right of appeal is a statutory right and where the statute has provided the right of appeal only against an order passed by the learned single Judge of this Court in its original jurisdiction, it is to be held that no appeal lies against the order of the learned single Judge passed in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Neither the rules nor the forms prescribed by the High Court will prevail over Section-4 of the Act which provides for an intra-Court appeal only against the order of the learned single Judge passed in the exercise of its original jurisdiction and not in the exercise of its supervisory jurisdiction. That being so, I find that the law laid down by the Full Bench of this Court in the case of Ritz Hotels (Mysore) Limited v. State of Karnataka and Ors. reported in 1996(7) Kar. LJ 600 is not correct and proper. Writ Appeal dismissed. JUDGMENT N.K. Sodhi, C.J. 1. The short question that arises for the consideration of this Full Bench is whether an order passed by a learned single Judge in a petition filed under Article 227 of the Constitution is appealable under Section 4 of the Karnataka High Court Act, 1961 (hereinafter referred to as the Act) and whether the Full Bench Judgment of this Court in Ritz Hotels (Mysore) Limited v. State of Karnataka and Ors., 1966 (7)KLJ 600 answering the aforesaid question in the affirmative lays

down the correct law. When this appeal came up for hearing before two of us on 17.1.2005 the Bench was of the view that the judgment of this Court in Ritz Hotels case (supra) required reconsideration and the matter was referred to a Bench of five Judges. This is how the case has been placed before us. 2. Since the question involved in the case is purely legal it is not necessary to narrate the facts in detail. The appellant herein is the plaintiff before the Trial Court. He has filed a suit for permanent injunction wherein he sought an ad-interim order of injunction which was granted. In appeal filed before the Civil Judge (Senior division) the said order of ad-interim injunction had been reversed and that order has been challenged by the appeallant herein before the learned single Judge in the writ petition which is still pending. The learned single Judge had initially granted an order of status quo which was subsequently vacated. It is this order of the learned single Judge which is the subject matter of challenge in the present appeal filed under Section 4 of the Act. 3. We have heard the learned Counsel for the parties and having gone through the judgments cited on both sides we proceed to deal with the question. Since the answer to the question depends upon the interpretation of Section 4 of the Act, it is necessary to refer to the same. It reads as under: "4. Appeals from decisions of a single Judge of the High Court: An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court", A careful reading of the aforesaid provision makes it clear that aright of appeal has been provided under Section 4 of the Act against a judgment or order of a learned single Judge only if it is passed in the exercise of original jurisdiction of the High Court and not otherwise. The word 'jurisdiction' means the power to hear and determine a case and the phrase "original jurisdiction" means the power to entertain cases in the first instance. Thus, a court of original jurisdiction is one in which an action has its origin and it also means that the litigation may be brought originally in that Court. In order to know when this Court exercises original jurisdiction, it will have to be found out in each case whether the issues raised in the petition arose for adjudication for the first time before the High Court or had they been already raised and adjudicated upon by any court or tribunal subordinate to it. Let us now examine the nature of jurisdiction exercised by a High Court under Articles 226 and 227 of the Constitution. It is by now well settled that there is a clear distinction in the exercise of power by the High Court under Articles 226 and 227. The power of judicial superintendence over the subordinate courts and tribunals is conferred on the High Court under Article 227 of the Constitution. This power is available apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. This power is intended to be exercised in appropriate cases in order to keep the subordinate courts and tribunals within the bounds of their authority and jurisdiction and it is not meant for correcting mere errors. The courts and tribunals while exercising statutory power conferred on them and even when they remain within their bounds may commit errors which are apparent on the face of the record or commit other illegalities and it is to

correct such errors or illegalities that the High Court exercises its jurisdiction under Article 226 of the Constitution by issuing a writ of certiorari or any other writ referred to therein except the writ of habeas corpus. While correcting the errors committed by the courts and tribunals the High Court does not sit as a court of appeal. Similarly while exercising the power under Article 227 of the Constitution to ensure that the subordinate courts or tribunals function within the limits of their jurisdiction, the High Court does not act as a court of appeal nor does it reweigh the evidence on the record to come to a conclusion different from the one arrived at by the subordinate court or tribunal. After examining the power of supervision of the High Court exercised through writs of certiorari the Apex Court in P. Kasilingam v. P.S.G College of Technology, 1981 (1) SCC 405 observed as under: "One is the area of jurisdiction and the qualifications and conditions of its exercise, the other is the observance of law in the course of its exercise. Such writs are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. It was rightly observed in Basappa's case (AIR 1954 SC 440) that a writ of certiorari will not issue as a cloak of an appeal in disguise". The nature of power exercised by a High Court under Articles 226 and 227 of the Constitution was succinctly brought out by the Supreme Court in Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr., AIR 1986 SC 1272 wherein the learned Judges considered the scope of Clause (15) of the Letters patent of the Bombay High Court to answer the question whether an appeal lay to a Division Bench of two Judges from the judgment of a single Judge of that High Court in a petition filed under Article 227 of the Constitution. Their Lordships observed as under: "99 ..... These two Articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Under Article 227 every High Court has the power of superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo- warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate Courts and Tribunals act within the limits of their authority and according to law (see State of Gujarat v. Vakhatsinghji Vajesinghji Veghela, AIR 1968 SC 1481, 1487, 1488 and Ahmedabad Mfg. & Calico Ptd., Co. Ltd. Ramtahel Ramnand, (AIR 1972 SC 1598). The orders, directions and writs under Article 226 are not intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition

to that conferred upon the High Courts by Article 226". Again in paragraph 100 of the Judgment it was observed as under: "Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate Court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate Court or tribunal has acted within its authority and according to law. ..... A series of decisions of this Court has firmly established that a proceeding under Article 226 is an original proceeding and when it conerns civil rights, it is an original civil proceeding (see, for instance, State of Uttar Pradesh v. Dr. Vijay Anand Maharaj (1963) 1 SCR1,16: (AIR 1963 SC 946 at p. 951), Commr. Of Income-tax, Bombay v. Ishwarlal Bhagwandas (1966 (1) SCR 190, 197-8: (AIR 1965 SC 1818 at p 1822), Ramesh v. Gendalal Motilal Patni 1966 (3) SCR 198, 203: (AIR 1966 SC 1445 AT P. 1447), Arbind Kumar Singh v. Nand Kishore Prasad (1968(3) SCR 322, 324: (AIR 1968 SC 1227 AT PP. 1228-29) and Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ramtahel Ramnand (AIR 1972 SC 1598)." While referring to the nature of the power exercised by a High Court under Article 227 of the Constitution their Lordships held as under: "It is equally well-settled in law that a proceeding under Article 227 is not an original proceeding." 4. Petitions are very often filed both under Articles 226 and 227 of the Constitution. When such is the case the court will have to examine having regard to the nature of allegations made in the petition and the relief claimed therein as to whether the petitioner wants the High Court to exercise its supervisory power under Article 227 or its original jurisdiction under Article 226. There can be cases where a claim is made seeking to invoke the power of the High Court under both the Articles. For instance, an award of a Labour Court is sought to be challenged in a petition filed under Articles 226 and 227 of the Constitution. If the challenge is limited only to the correctness of the award the petitioner is obviously invoking the power of this court under Article 227 because the cause has not been initiated for the first time in this court. It had arisen before the Labour Court who gave its decision thereon in the form of an award, the correctness of which is challenged. If in addition to the correctness of the award the petitioner were to challenge the vires of any provision of the Industrial Disputes Act or of any other provision or the very jurisdiction of the Labour Court to pass the award, or on the ground that it suffered from an error of law apparent on the face of the record, he is invoking the powers of the High Court under Article 226 as well and if such issues are decided by a learned single Judge the decision will be deemed to have been rendered in the exercise of its original jurisdiction under Article 226. This aspect has also been examined by their Lordships in Umaji's ease (supra) in paragraph 106 of the judgment. However, the case before us is not a case of such a type because the learned senior Counsel appearing for the appellant very fairly conceded that he is invoking the jurisdiction of this Court under Article 227 of the Constitution before the learned single Judge. 5. It is thus clear that proceedings under Article 226 are in exercise of original jurisdiction

of the High Court whereas proceedings under Article 227 of the Constitution are in the exercise of its supervisory powers. Section 4 of the Act when read in this context would make it clear that an infra-court appeal is provided only against the order of a learned single Judge passed in the exercise of original jurisdiction under Article 226 and not when he exercises the supervisory powers under Article 227. It is by now well settled that a right of appeal is a statutory right and the said right is governed by the terms of the statute creating it. It is not an inherent right and can be availed of only if the statute provides for it. Its nature, character and extend will have to be determined and controlled by the relevant provisions creating the right. 6. The question that has arisen before us had come up for consideration before a Division Bench of this court in Kalpana Theatre v. B.S. Ravishankar Major and Ors., AIR 1995 KAR 426 wherein G.T. Nanavati, C.J. after examining various judgments of the Supreme Court held as under: "8. If Section 4 of the Act is examined in the light of the aforesaid decisions of the Supreme Court, it becomes apparent that Section 4 does not provide an appeal against the judgment or order passed by a single Judge of this Court in a petition under Article 227 and that an appeal will lie only if a judgment or order is passed in a petition under Article 226. Where a petition is filed both under Articles 226 and 227, it will have to be considered whether the points raised in the petition arose for adjudication for the first time before the High Court. If the challenge in the petition is with respect to the points already adjudicated upon the subordinate court or Tribunal, then it will have to be held that supervisory jurisdiction of High Court was invoked and not the original. The relief prayed for and granted by the Court is also a factor that would indicate whether the petition was filed under Article 226 or Article 227. In cases where it can be said that the petition would fall both under Article 226 and Article 227 then it would be proper to consider the petition as the one filed under Article 226 of the Constitution and in those cases, an appeal would lie to a Bench of two Judges under Section 4 of the Act". The correctness of this Division Bench decision was doubted and the matter was referred to a Full Bench of three Judges in Ritz Hotels case (supra). The question whether an appeal lay against an order of a learned single Judge passed under Article 227 of the Constitution was again considered by the Full Bench in Ritz Hotels case (supra) and Chief Justice R.P. Sethi, speaking for the Bench observed that the law laid down in Kalpana Theatre's case (supra) was contrary to the settled position of law and overruled the same. It was observed that the learned Judges in Kalpana Theatre's case (supra) had not noticed the effect of the amendment of the Act by Amending Act 12 of 1973 whereby the provisions of Sections 9 and 10 of the Act had been amended. It was further observed that the provisions of Rules 2 and 26 of the Writ Proceedings Rules, 1977 had also not been taken note of. The Full Bench in Ritz Hotels case while over ruling the Division Bench judgment in Kalpana Theatre's case held as under: "The scope of Section 4 of the Act in the context of the other provisions of law and particularly the amendment made by Amendment Act 12 of 1973 is admittedly wider than letters patent or the Acts of the other States which were referred to or relied upon by the Division Bench in Kalpana Theatre's case, supra. In our opinion, the law laid

down in Kalpana Threatre's case, supra, being contrary to the settled position of law is liable to be over ruled. We hold that an appeal against an order passed by a single Judge in a proceeding arising out of a petition filed under Articles 226, 227 and 228 of the Constitution of India is maintainable. The reference is answered accordingly". With respect to the learned Judges of the Full Bench who decided Ritz Hotels case (supra), we are of the view that the amendment of the Act by Act No. 12 of 1973 made no difference to the maintainability of an appeal under Section 4 of the Act. At this stage it may be relevant to make a reference to the amendments brought about in Sections 9 and 10 of the Act by Act 12 of 1973. Clause (xii) was added in Section 9 of the Act which prescribes the matters in relation to which the powers of the High Court are to be exercised by a single Judge. This clause reads as under: "Other powers of a single Judge-The powers of the High Court in relations to the following matters shall be exercised by a single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges- (i) .... (xii) exercise of powers under - (a) Clause (1) of Article 226 of the Constitution of India except where such power relates to the issue of a writ in the nature of habeas corpus; and (b) Articles 227 and 228 of the Constitution of India". Similarly Clause (iv) and (iv-a) were added in Section 10 of the Act replacing the old Clause (iv). Section 10 deals with those matters in relation to which powers of the High Court are exercised by a Bench of two Judges. Clauses (iv) and (iv-a) introduced in the year 1973 read as under: "10. Other powers of a Bench of two Judges:-The powers of the High Court in relation to the following matters shall be exercised by a Bench of two Judges- (i)..... (iv) exercise of powers under Clause (1) of Article 226 of the Constitution of India where such power relates to the issue of a writ in the nature of habeas corpus; (iv-a) an appeal from any original judgment, order or decree passed by a single Judge in exercise of the powers under Clause (1) of Article 226, Article 227 and Article 228 of the Constitution of India". As already noticed earlier, Section 4 is the only provision in the Act which provides for an appeal. Section 9 of the Act specifies the matters in regard to which the powers of the High Court shall be exercised by a single Judge whereas Section 10 refers to those matters in regard to which powers of the High Court are exercised by a Bench of two Judges. Prior to the amendment of the Act in the year 1973 Clause (iv) of Section 10 provided that petitions for the exercise of powers under Clause (1) of Article 226, Article 227 and Article 228 of the Constitution would be dealt with by a Bench of two Judges. After the amendment all petitions under Clause (1) of Article 226 of the Constitution other than a writ in the nature of habeas corpus and petitions under Articles 227 and 228 of the Constitution are required to be dealt with by a single Judge and the objects and reasons of the Amending Act do suggest that the Legislature wanted such petitions to be dealt with by a single Judge with a right of appeal to a Bench of two Judges. The learned Judges in Ritz Hotels case (supra) relied upon the statement of objects and reasons of the Amending Act to hold that an appeal lay against an order of a single Judge passed in a petition under Article 227. We do not think that was

the right approach. The Legislature may have intended to provide for a right of appeal but in its wisdom did not amend Section 4 of the Act which is the only provision providing for a right of appeal and this section continues to provide for an appeal against the decision of a single Judge only in the exercise of his original jurisdiction. By amending Sections 9 and 10 of the Act, the Legislature has brought petitions under Clause (1) of Article 226 other than a petition for the issue of a writ in the nature of habeas corpus and applications under Articles 227 and 228 of the Constitution to be heard by a single Judge but the right of appeal continues to be available only in the case of orders passed by a learned single Judge in the exercise of his original jurisdiction, that is, under Article 226. The amendment to Section 10 has made no difference because this Section does not provide for a right of appeal. It was open to the Legislature to provide for a right of appeal even against an order passed by a learned single Judge in the exercise of supervisory jurisdiction under Article 227 of the Constitution and in that event Section 4 has to be amended accordingly. Since no such amendment has been made in Section 4, the right of appeal in the case of an order passed by a learned single Judge under Article 227 of the Constitution cannot be inferred. Whether such a right of appeal exists or not will have to be seen from the language used in Section 4 of the Act. It is a well settled principle of interpretation that the language employed in a provision determines the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957SC 907 Justice Gajendragadkar (as his Lordship then was) observed that, "the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act". In Robert Wigram Crawford v. Richard Spooner, 4 MIA 179 at page 187 The Privy Council observed as under: "The Construction of the Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; ..... If the Legislature did intend that which it has not expressed clearly; much more, if the Legislature intended something very different; if the Legislature intended something pretty nearly the opposite of what is said, it is not for Judges to invent something which they do not meet with in the words of the text .....the true way in these cases is, to take the words as the Legislature have given them, ...". Going by the language used in Section 4 which has been reproduced in the earlier part of the judgment, we have no doubt in our mind that an appeal has been provided against an order of a single Judge only when it is passed in the exercise of his original jurisdiction i.e., when he deals with a petition under Clause (1) of Article 226 of the Constitution. The right of appeal, as already observed, is a statutory right and where the statute has provided for an appeal only against an order of a single Judge passed in the exercise of his original jurisdiction it has to be held that no appeal would lie against an order passed by him in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Neither the Rules nor the Forms prescribed by the High Court

could override or control the provisions of Section 4 of the Act which alone provides for an intra-court appeal only against the orders passed in exercise of original jurisdiction. Moreover, Rules 2 and 26 of the Writ Proceedings Rules do not provide for an appeal against an order of a learned single Judge passed in the exercise of supervisory jurisdiction. In this view of the matter, we are of the opinion that the law laid down by the Division Bench of this Court in Kalpana Theatre's case (supra) was the correct law and that the Full Bench was not right in overruling the same. We have, therefore, no hesitation in holding that the law laid down by the Full Bench in Ritz Hotels case (supra) is not the correct law and we over rule the same and hold that no appeal lies under Section 4 of the Act against an order passed by a learned single Judge in a petition filed under Article 227 of the Constitution. 7. In the case before us it is an admitted position that the powers which are sought to be invoked in the writ petition are under Article 227 of the Constitution and therefore the interim order passed by the learned single Judge is not appealable. The appeal therefore fails and the same is dismissed with no order as to costs. B. Padmaraj, J. (concurring)-I had the privilege of going through the erudite judgment prepared by my Lord the Hon'ble Chief Justice and I respectfully agree with him. However, having regard to the substantial question of law involving as to the interpretation of Section 4 of the Karnataka High Court Act, I thought of putting a few lines of my own in certain aspects of the matter. 9. While adverting to the facts of this case, the appellant herein is the plaintiff before the trial Court. He has filed a suit for Permanent Injunction wherein he sought for an ad-interim order of injunction which was granted. But in the appeal filed before the appellate Court, the said order of ad-interim order of injunction granted by the trial Court had been reversed. The same has been challenged by the appellant herein before the learned single Judge in the writ petition. In the writ petition, the learned single Judge had initially granted an order of status-quo which was subsequently vacated. It is this order of the learned single Judge which is a subject matter of challenge in the instant appeal filed before a Division Bench of this Court under Section 4 of the Karnataka High Court Act. When the appeal was listed for preliminary hearing, the question that arise for consideration was whether an order passed by a learned single Judge in a petition filed under Article 227 of the Constitution is appealable under Section 4 of the Karnataka High Court Act, 1961. The Division Bench being of the prima facie view that an order/passed in a petition under Article 227 of the Constitution is one in the exercise of supervisory powers of this Court and not in the exercise of its original jurisdiction, felt that the law laid down by the Full Bench in the case of Ritz Hotels (Mysore) Limited v. State of Karnataka and Ors. in 1996(7) Kar. LJ 600 (supra) requires to be reconsidered by a larger Bench and accordingly the same has been referred to this larger Bench. The question for reference in whether an order passed in a petition, essentially under Article 227 of the Constitution is appealable under Section 4 of the Karnataka High Court Act? 10. Section 4 of the Karnataka High Court Act reads as under: "Appeals from decisions of a single Judge of the High Court-An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under

this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court. 11. A careful perusal of the provisions contained in Section 4 of the Karnataka High Court Act would make it very clear that an appeal would lie against a Judgment or Order of the learned single Judge in the exercise of the original jurisdiction of the High Court and not in exercise of its supervisory jurisdiction. 12. It is needless to point out that Article 227 of the Constitution confers power of superintendence over all Courts and Tribunals throughout the territories in relation to which the High Court exercises jurisdiction and such power of superintendence is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. It is equally needless to point out that there is difference between a writ of certiorari under article 226 and supervisory jurisdiction under article 227 of the Constitution. The difference between these two articles of the Constitution was well brought out in the case of Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr. reported in AIR 1986 SC 1272. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original, but only supervisory. The power under Article 227 is intended to be used for the purpose of keeping subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors. Though the distinction between the two jurisdictions under Articles 226 and 227 of the Constitution is very clear in the sense that one is in exercise of original jurisdiction of the High Court while the other is not original, but only supervisory, it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution. Be that as it may, the fact remains that the writ of certiorari under Article 226 of the Constitution is a exercise of its original jurisdiction by the High Court whereas under Article 227 of the Constitution, the High Court will be exercising its supervisory jurisdiction and not a original jurisdiction. As I have already indicated, in terms of Section 4 of the Karnataka High Court Act, an appeal is provided by way of intra-Court appeal against the order of the learned single Judge in the exercise of its original jurisdiction and not in the exercise of its supervisory jurisdiction. In the case of Sadhana Lodh v. National Insurance Co. Ltd., 2003 AIR SCW 930 reported in the three Judge Bench of the Hon'ble Supreme Court has clearly observed that where remedy for filing a Revision before the High Court under Section 115 of CPC has been expressly barred by the State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. In fact as a matter of illustration, it has been observed therein that where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing Revision under Section 115 of CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 of CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough

to attract jurisdiction of the High Court under Article 226 of the Constitution. This being the position of law, there cannot be any appeal against the order of the learned single Judge passed in the exercise of its supervisory jurisdiction. It may be stated that the right of appeal is a statutory right and where the statute has provided the right of appeal only against an order passed by the learned single Judge of this Court in its original jurisdiction, it is to be held that no appeal lies against the order of the learned single Judge passed in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Neither the rules nor the forms prescribed by the High Court will prevail over Section 4 of the Act which provides for an intra-Court appeal only against the order of the learned single Judge passed in the exercise of its original jurisdiction and not in the exercise of its supervisory jurisdiction. That being so, I find that the law laid down by the Full Bench of this Court in the case of Ritz Hotels (Mysore) Limited v. State of Karnataka and Ors. reported in 1996(7) Kar. LJ 600 is not correct and proper. H.G Ramesh, J. 13. I have gone through the Judgment in draft proposed by the Hon'ble Chief Justice. I am in respectful agreement with the conclusion reached by his Lordship that no appeal would lie under Section 4 of the Karnataka High Court Act, 1961 against an order passed by a learned Single Judge in a petition filed under Article 227 of the Constitution of India. Accordingly, the appeal fails and is hereby dismissed.