2022 INSC 1056

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/ APPELLATE JURISDICTION

I.A. No.68597 of 2021 AND I.A. No. 51632 of 2022
IN &
WRIT PETITION (CIVIL) NO.1159 OF 2019

HDFC BANK LTD. & ORS. ...PETITIONER (S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT (S)

WITH
I.A. No.54521 of 2022
IN &
WRIT PETITION (CIVIL) NO.683 OF 2021

WRIT PETITION (CIVIL) NO. 1469 OF 2019

WRIT PETITION (CIVIL) NO.690 OF 2021

WRIT PETITION (CIVIL) NO.709 OF 2021

WRIT PETITION (CIVIL) NO.768 OF 2021

WRIT PETITION (CIVIL) NO.765 OF 2021

SPECIAL LEAVE PETITION (CIVIL) NO.14343 OF 2022

O R D E R

B.R. GAVAI, J.

1. For the reasons stated in I.A. No.68597 of 2021 in Writ Petition (Civil) No.1159 of 2019 for Impleadment, the same is allowed.

2. This batch of writ petitions has been filed by various Banks including private banks, inter alia, challenging the action of the respondent-Reserve Bank of India (hereinafter referred to as "RBI") in directing disclosure of confidential and sensitive information pertaining to their affairs, their employees and their customers under the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act"), which, in their submission, is otherwise exempt under Section 8 thereof.

3. We are treating Writ Petition (Civil) No. 1159 of 2019 as the lead matter.

4. Interlocutory Applications being I.A. No. 51632 of 2022 in Writ Petition (Civil) No.1159 of 2019 and I.A. No.54521 of 2022 in Writ Petition (Civil) No.683 of 2021 have been filed by the

applicant-Girish Mittal, thereby seeking dismissal of the present writ petitions.

5. It is the contention of the applicant that the present writ petitions, in effect, are challenging the final judgment and order dated 16th December 2015, passed by this Court in the case of ***Reserve Bank of India vs. Jayantilal N. Mistry***[1] and hence the same is not maintainable and is liable to be dismissed.

6. We have heard Mr. Prashant Bhushan, learned counsel appearing on behalf of the applicant-Girish Mittal and Mr. Rakesh Dwivedi, Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, and Mr. K.V. Viswanathan, learned Senior Counsels and Mr. Divyanshu Sahay, learned counsel appearing on behalf of the writ petitioners/Banks.

7. Mr. Prashant Bhushan, learned counsel, submitted that the issue which is sought to be raised in the present writ petitions has already been put to rest by a judgment of this court in the case of ***Jayantilal N. Mistry (supra)***. It is further

1 (2016) 3 SCC 525

submitted that this Court, in the case of ***Girish Mittal vs. Parvati V. Sundaram and another***[2], while holding that the RBI has committed contempt of this Court by exempting disclosure of material that was directed to be given by this Court, has also held that the RBI was duty bound to furnish all information relating to inspection reports and other materials.

8. Mr. Prashant Bhushan relies on the judgment of a Nine-Judge Bench of this Court in the case of ***Naresh Shridhar Mirajkar and others vs. State of Maharashtra and Anr.***[3] in support of his proposition that a judicial decision cannot be corrected by this Court in exercise of its jurisdiction under Article 32 of the Constitution of India. He also relied on the judgment of a Seven-Judge Bench of this Court in the case of ***A.R. Antulay vs. R.S. Nayak and another***[4] to contend that the judicial proceedings in this Court are not subject to the writ jurisdiction thereof.

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2 (2019) 20 SCC 747 = Contempt Petition (C) No. 928 of 2016 in Transfer Case (C) No. 95 of 2015, decided on 26th April 2019
3 (1966) 3 SCR 744
4 (1988) 2 SCC 602

9. Mr. Prashant Bhushan further submitted that this Court in the case of ***Anil Kumar Barat vs. Secretary, Indian Tea Association and others***[5] has also held that the validity of an order passed by this Court itself cannot be subject to writ jurisdiction of this Court.

10. Mr. Bhushan also relied on the judgments of a Three-Judge Bench of this Court in the cases of ***Khoday Distilleries Ltd. and another vs. Registrar General, Supreme Court of India***[6], ***Mohd. Aslam vs. Union of India and others***[7] and ***Union of India and others vs. Major S.P. Sharma and others***[8] and the judgment of a Five-Judge Bench of this Court in the case of ***Rupa Ashok Hurra vs. Ashok Hurra and another***[9] to buttress his submissions.

11. Mr. Bhushan further submitted that in the case of ***Jayantilal N. Mistry (supra)***, several Miscellaneous

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5 (2001) 5 SCC 42
6 (1996) 3 SCC 114
7 (1996) 2 SCC 749
8 (2014) 6 SCC 351
9 (2002) 4 SCC 388

Applications were filed on behalf of the Banks for impleadment. As such, the judgment delivered in the case of ***Jayantilal N. Mistry (supra)*** is after consideration of rival submissions, which now cannot be reopened. He further submitted that this Court by order dated 28th April 2021, passed in M.A. No.2342 of 2019 in Transferred Case (Civil) No.91 of 2015 and other connected matters has specifically rejected the prayer filed by the Banks (writ petitioners herein) for recall of the judgment dated 16th December 2015 passed by this Court in the case of ***Jayantilal N. Mistry (supra)***, and as such, the present writ petitions are liable to be dismissed.

12. Per contra, the learned Senior Counsels appearing on behalf of the writ petitioners/Banks submit that though M.A. No.2342 of 2019 in Transferred Case (Civil) No.91 of 2015 and other connected matters were rejected by this Court by order dated 28th April 2021, this Court clarified that the dismissal of those applications shall not prevent the applicant-Banks therein to pursue other remedies available to them in law. It is

thus submitted that the said order would not come in the way of the present petitioners in filing the present petitions.

13. It is submitted that Section 11 of the RTI Act provides that when any information relating to third party has been sought, a written notice is required to be given to such third party of the request, by the Central Public Information Officer or State Public Information Officer, as the case may be, and the submissions by such third party are required to be taken into consideration while taking a decision about the disclosure of the information. Reliance in this respect has been placed on the judgment of this Court in the case of ***Chief Information Commissioner vs. High Court of Gujarat and another***[10]. It is submitted that this Court in the case of ***Jayantilal N. Mistry (supra)*** has not taken into consideration this aspect of the matter.

14. It is further submitted on behalf of the writ petitioners/Banks that the right to privacy has been said to be

10 (2020) 4 SCC 702

as implicit fundamental right by a Five-Judge Constitution Bench of this Court in the case of ***Supreme Court Advocates-on-Record Association and another vs. Union of India***[11]. It is submitted that the said view is also reiterated by a Nine-Judge Constitution Bench of this Court in the case of ***K.S. Puttaswamy and another vs Union of India*** **and others**[12]**,** which has explicitly and categorically recognised the right to privacy as a fundamental right.

15. Mr. Rakesh Dwivedi, learned Senior Counsel, relied on the judgment of this Court in the case of ***A.R. Antulay (supra)*** in support of the proposition that no man should suffer because of the mistake of the Court. He submits that the rules of procedure are the handmaidens of justice and not the mistress of justice. He relies on the maxim "*ex debito justitiae*". He further relies on the judgment of this Court in the case of ***Sanjay Singh and another vs. U.P. Public Service***

11 (2016) 5 SCC 1
12 (2017) 10 SCC 1

Commission, Allahabad and another[13] in support of the submission that the petition would be tenable.

16. Mr. Mukul Rohatgi, learned Senior Counsel, submitted that the petitioners herein are private banks and not a public authority as defined under the RTI Act. He relies on the judgment of this Court in the case of ***Thalappalam Service Cooperative Bank Limited and others vs. State of Kerala and others***[14] in that regard. He submitted that RBI's Inspection Reports in respect of the inspection carried out under Section 35 of the Banking Regulation Act, 1949 are so confidential that they cannot even be provided to the Directors individually. He relies on the communication issued by the RBI to all the Banks dated 14th March 1998 in this regard.

17. Mr. Rohatgi further submitted that an earlier policy as notified by the RBI on 30th June 1992 was in tune with the provisions of Section 8 of the RTI Act, the provisions of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the

13 (2007) 3 SCC 720
14 (2013) 16 SCC 82

RBI Act") and the Banking Regulation Act, 1949. However, in view of the judgment of this Court in the case of ***Girish Mittal (supra)***, the RBI has modified the policy into a one-line policy, providing therein that the disclosure of information was to be in accordance with the judgment and order of this Court in ***Girish Mittal (supra)***. Mr. Rohatgi, learned Senior Counsel relied on the judgment of this Court in the case of ***Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and another***[15] in support of his submission that the Court will have to strike a balance between public interest and private interest. He also relies on the judgment of this Court in the case of ***Girish Ramchandra Deshpande vs. Central Information Commissioner and others***[16] to contend that personal information cannot be directed to be disclosed unless outweighing public interest demands it to be done.

18. Mr. K.V. Viswanathan, learned Senior Counsel submits that HDFC Bank, Kotak Bank and Bandhan Bank were not

15 (2012) 13 SCC 61
16 (2013) 1 SCC 212

parties in the case of ***Jayantilal N. Mistry (supra)***. He submits that sub-Section (5) of Section 35 of the Banking Regulation Act, 1949 provides a specific procedure as to in what manner the inspection report would be published. He submits that when a special Act provides a particular manner for disclosure of an information, it will have an overriding effect over the RTI Act. The learned Senior Counsel submits that the said provisions were not noticed in the case of ***Jayantilal N. Mistry (supra)***.

19. Mr. Jaideep Gupta, learned Senior Counsel submitted that this Court in the case of ***Jayantilal N. Mistry (supra)*** has not taken into consideration the provisions of the Credit Information Companies (Regulation) Act, 2005.

20. Mr. Dushyant Dave, learned Senior Counsel, submitted that Section 45NB of the RBI Act emphasizes on the confidentiality of certain information with regard to non-banking companies. He submits that sub-section (4) of Section 45NB of the RBI Act, which is a non-obstante clause, provides

that, notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter. He submits that this provision has not been noticed in the case of ***Jayantilal N. Mistry (supra)***.

21. It is submitted on behalf of all the writ petitioners/Banks that what is under challenge is the action of the RBI compelling the petitioners to disclose certain information which itself is exempted under the provisions of the RBI Act. It is submitted that various other special enactments specifically prohibit such information to be disclosed. It is submitted that since the RBI's directions are issued in pursuance to the judgments of this Court in the cases of ***Jayantilal N. Mistry (supra)*** and ***Girish Mittal (supra)***, the petitioners cannot approach the High Court and the only remedy that is available to the petitioners is by way of the present writ petitions. It is submitted by learned Senior Counsels appearing on behalf of the writ

petitioners/Banks that this Court in ***Jayantilal N. Mistry (supra)*** does not notice the judgment of this Court in the case of ***Supreme Court Advocates-on-Record Association and another (supra).*** The judgment of this Court in the case of ***Supreme Court Advocates-on-Record Association and another (supra)*** was rendered on 16th October 2015, whereas the judgment of this Court in the case of ***Jayantilal N. Mistry (supra)*** was rendered on 16th December 2015. It is further submitted that, in view of the judgment of the Constitution Bench consisting of Nine Hon'ble Judges in the case of ***K.S. Puttaswamy and another*** **(supra)** clearly recognizing the right to privacy as a fundamental right, the law laid down by this Court in the case of ***Jayantilal N. Mistry (supra)*** to the contrary is no more a good law and, therefore, requires reconsideration by a larger Bench.

22. In the case of ***Naresh Shridhar Mirajkar and others (supra)***, a Nine-Judge Constitution Bench of this Court was considering as to whether an order passed by the High Court

on original side in the proceedings before it could be challenged under Article 32 of the Constitution for enforcement of fundamental rights guaranteed under Article 19(1)(a), (d) and (g) of the Constitution of India. It will be relevant to refer to the following observations of this Court in the said case:

> "The basis of Mr Setalvad's argument is that the impugned order is not an order inter-partes, as it affects the fundamental rights of the strangers to the litigation, and that the said order is without jurisdiction. ***We have already held that the impugned order cannot be said to affect the fundamental rights of the petitioners and that though it is not inter-partes in the sense that it affects strangers to the proceedings, it has been passed by the High Court in relation to a matter pending before it for its adjudication and as such, like other judicial orders passed by the High Court in proceedings pending before it, the correctness of the impugned order can be challenged only by appeal and not by writ proceedings.*** We have also held that the High Court has inherent jurisdiction to pass such an order.
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> But apart from this aspect of the matter, we think it would be inappropriate to allow the petitioners to raise the question about the jurisdiction of the High Court to pass the impugned order in proceedings under Article

> 32 which seek for the issue of a writ of certiorari to correct the said order. If questions about the jurisdiction of superior courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Article 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter-partes, and those which are not inter-partes in the sense that they bind strangers to the proceedings. Therefore, in our opinion, having regard to the fact that the impugned order has been passed by a superior court of record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32."
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> [emphasis supplied]

23. It could thus be seen that the Nine-Judge Bench of this Court, speaking through P.B. Gajendragadkar, CJ., categorically held that the impugned orders could not affect the fundamental rights of the petitioners. It has further been held that since the order was passed in the proceedings pending before the High Court, the correctness of the impugned order could be challenged only by appeal and not by writ proceedings. It has been further held that, having regard to the

fact that the order had been passed by a superior court of record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order could not be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32. This Court further observed thus:

> "We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. ***We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Article 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32.*** The words used in Article 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within

> the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32; to hold otherwise would be repugnant to the well-recognised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point."
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> [emphasis supplied]

24. It could thus be seen that this Court held that it would be unreasonable to hold that this Court, under Article 32, could correct the judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and therefore this Court can correct the same by issuance of a writ of certiorari under Article 32. This Court held that though the words used in Article 32 are wide, the order impugned before it could not be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32.

25. Insofar as the judgment of this Court in the case of ***Khoday Distilleries Ltd. and another (supra)***, on which Mr. Prashant Bhushan placed reliance, is concerned, this Court in

the said case was considering therein a challenge to the correctness of the decision on merits after the appeal as well as review petition were dismissed.

26. In the case of ***Mohd. Aslam (supra),*** this Court held that Article 32 of the Constitution was not available to assail the correctness of a decision on merits or to claim reconsideration. It, however, considered the contention raised on behalf of the petitioners that the judgment in the case of ***Manohar Joshi vs. Nitin Bhaurao Patil and another***[17] was in conflict with the Constitution Bench judgement of this Court in the case of ***S.R. Bommai and others vs. Union of India and others***[18]. This Court after considering the submissions found that the opinion so expressed was misplaced.

27. Insofar as the judgment of this Court in the case of ***Major S.P. Sharma and others (supra)*** is concerned, in the said case, the first round of litigation arising out of termination of respondent-employee had reached finality upto this Court.

17 (1996) 1 SCC 169
18 (1994) 3 SCC 1

However, the same was sought to be reopened by filing another writ petition before the High Court. In this background, this Court observed thus:

> "**90.** Violation of fundamental rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently, that too, when challenged collaterally as that was directly affecting the basic structure of the Constitution incorporating the power of judicial review of this Court. There is no doubt that this Court has an extensive power to correct an error or to review its decision but that cannot be done at the cost of doctrine of finality. An issue of law can be overruled later on, but a question of fact or, as in the present case, the dispute with regard to the termination of services cannot be reopened once it has been finally sealed in proceedings inter se between the parties up to this Court way back in 1980."

28. It could thus be seen that this court has held that when a question of fact has reached finality inter se between the parties, it cannot be reopened in a collateral proceeding. However, it has been observed that an issue of law can be overruled later on.

29. Mr. Prashant Bhushan strongly relied on the judgment of this Court in the case of ***Rupa Ashok Hurra (supra).*** It will be relevant to refer to the following observations of this Court in the judgment of Quadri, J.

> "41. At one time adherence to the principle of *stare decisis* was so rigidly followed in the courts governed by the English jurisprudence that departing from an earlier precedent was considered heresy. With the declaration of the practice statement by the House of Lords, the highest court in England was enabled to depart from a previous decision when it appeared right to do so. ***The next step forward by the highest court to do justice was to review its judgment inter partes to correct injustice. So far as this Court is concerned, we have already pointed out above that it has been conferred the power to review its own judgments under Article 137 of the Constitution. The role of the judiciary to merely interpret and declare the law was the concept of a bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discernible shift***

in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principle of finality of the judgment. In *Union of India* v. *Raghubir Singh* [(1989) 2 SCC 754] Pathak, C.J. speaking for the Constitution Bench aptly observed: (SCC pp. 766-67, para 10)

> "10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that 'the life of the law has not been logic it has been experience' (Oliver Wendell Holmes : *The Common Law*, p. 5), and again when he declared in another study (Oliver Wendell Holmes : *Common Carriers and the Common Law*, (1943) 9 Curr LT 387, 388) that 'the law is forever adopting new principles from life at one end', and 'sloughing off' old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging

> from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined (Julius Stone : *Legal Systems & Lawyers Reasoning*, pp. 58-59)."

42. ***The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles — ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision-making process not disclosing his links with a party to the case, or on account of abuse of the process of the court***. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. ***We are of the view that though Judges of the highest court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which***

> ***would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error.*** After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in the public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable injustice.
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> xxx xxx xxx
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> 49. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power."
>
> [emphasis supplied]

30. This Court in the aforesaid case held that the concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. The Court has to balance ensuring certainty and finality of a judgment of the

Court of last resort on one hand and dispensing justice on reconsideration of a judgment on the valid grounds on the other hand. This Court has observed that though Judges of the highest court do their best, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. It has been held that in such a case it would not only be proper but also obligatory both legally and morally to rectify the error. This Court further held that to prevent abuse of its process and to cure a gross miscarriage of justice, the Court may reconsider its judgments in exercise of its inherent power.

31. This Court in the case of ***A.R. Antulay (supra)***, *speaking through Sabyasachi Mukharji, J.* observed thus:

> "**82**. Lord Cairns in *Rodger* v. *Comptoir D'escompte De Paris* [(1869-71) LR 3 PC 465, 475 : 17 ER 120] observed thus:
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> > "Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of

> the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court.

83. This passage was quoted in the Gujarat High Court by D.A. Desai, J., speaking for the Gujarat High Court in *Soni Vrajlal* v. *Soni Jadavji* [AIR 1972 Guj 148 : (1972) 13 Guj LR 555] as mentioned before. It appears that in giving directions on 16-2-1984, this Court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar case* [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of

> justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."

32. It could thus be seen that the principle of *ex debito justitiae* has been emphasized. This Court held that no man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. It has been held that the rules of procedure are the handmaidens of justice and not the mistress of justice. It has further been held that if a man has been wronged, so long as the wrong lies within the human machinery of administration of justice, that wrong must be remedied.

33. Ranganath Misra, J., in his concurrent opinion, observed thus:

> "**102**. This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in *Montreal Street Railway Co.* v. *Normadin* [1917 AC 170] (*sic*) stated:
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> > All rules of court are nothing but provisions intended to secure proper administration of justice. It is,

> therefore, essential that they should be made to serve and be subordinate to that purpose.

This Court in *State of Gujarat* v. *Ramprakash P. Puri* [(1969) 3 SCC 156 : 1970 SCC (Cri) 29 : (1970) 2 SCR 875] reiterated the position by saying [SCC p. 159 : SCC (Cri) p. 31, para 8]

> Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on the principle as indicated in (*Alexander*) *Rodger case* [(1969-71) LR 3 PC 465 : 17 ER 120] . I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan., J. speaking for a Four Judge Bench

in *Keshardeo Chamria* v. *Radha Kissen Chamria* [1953 SCR 136 : AIR 1953 SC 23] at Page 153 stated:

> The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors.

103. The Privy Council in *Debi Bakhsh Singh* v. *Habib Shah* [ILR (1913) 35 All 331] pointed out that an abuse of the process of the court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Law Lords thus:

> Quite apart from Section 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made.

It was pointed out by the Privy Council in *The Bolivar* [AIR 1916 PC 85] that:

> Where substantial injustice would otherwise result, the Court has, in Their Lordships' opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties...

Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle *actus*

> *curia neminem gravabit* — an act of the court should prejudice no one.
>
> **104**. To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militatte against its status or authority. Perhaps it would enhance both."

34. It has been held that this being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. It has further been held that once a judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising its inherent powers. It has been held that, to err is human, and the Courts including the Apex Court are no exception.

35. This Court in the case of ***Sanjay Singh and another (supra)*** has observed thus:

> "**10.** The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every

judgment of superior courts has three segments, namely, (*i*) the facts and the point at issue; (*ii*) the reasons for the decision; and (*iii*) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The term "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment. *Rupa Ashok Hurra* [(2002) 4 SCC 388] is of course, an authority for the proposition that a petition under Article 32 would not be maintainable to challenge or set aside or quash the final order contained in a judgment of this Court. ***It does not lay down a proposition that the ratio decidendi of any earlier decision cannot be examined or differed in another case. Where violation of a fundamental right of a citizen is alleged in a petition under Article 32, it cannot be dismissed, as not maintainable, merely because it seeks to distinguish or challenge the ratio decidendi of an earlier judgment, except where it is between the same parties and in respect of the same cause of action.*** Where a legal issue raised in a petition under Article 32 is covered by a

> decision of this Court, the Court may dismiss the petition following the ratio decidendi of the earlier decision. Such dismissal is not on the ground of "maintainability" but on the ground that the issue raised is not tenable, in view of the law laid down in the earlier decision. ***But if the Court is satisfied that the issue raised in the later petition requires consideration and in that context the earlier decision requires re-examination, the Court can certainly proceed to examine the matter (or refer the matter to a larger Bench, if the earlier decision is not of a smaller Bench).*** When the issue is re-examined and a view is taken different from the one taken earlier, a new ratio is laid down. When the ratio decidendi of the earlier decision undergoes such change, the final order of the earlier decision as applicable to the parties to the earlier decision, is in no way altered or disturbed. Therefore, the contention that a writ petition under Article 32 is barred or not maintainable with reference to an issue which is the subject-matter of an earlier decision, is rejected."
>
> [emphasis supplied]

36. After referring to the judgment of this Court in the case of ***Rupa Ashok Hurra (supra)***, this Court has held that it does not lay down a proposition that the ratio decidendi of an earlier decision cannot be examined or differed with in another case.

It has been held that if the Court is satisfied that the issue raised in the later petition requires consideration and in that context, the earlier decision requires re-examination, the Court can certainly proceed to examine the matter or refer the matter to a larger Bench, if the earlier decision is not of a smaller Bench. This Court, therefore, specifically rejected the contention that a writ petition under Article 32 of the Constitution was barred or not maintainable with reference to an issue which was the subject matter of an earlier decision.

37. In the present case, admittedly, the writ petitioners/Banks were not parties in the case of ***Jayantilal N. Mistry (supra)***. Though the Miscellaneous Applications filed by HDFC Bank and others for recall of the judgment and order in the case of ***Jayantilal N. Mistry (supra)*** were rejected by this Court vide order dated 28th April 2021, this Court in the said order specifically observed thus:

> "The dismissal of these applications shall not prevent the applicants to pursue other remedies available to them in law."

38. It is thus clear that this Court did not foreclose the right of the petitioners/Banks to pursue other remedies available to them in law.

39. In view of the judgment of this Court in the case of ***Jayantilal N. Mistry (supra)***, the RBI is entitled to issue directions to the petitioners/Banks to disclose information even with regard to the individual customers of the Bank. In effect, it may adversely affect the individuals' fundamental right to privacy.

40. A Nine-Judge Constitution Bench of this Court in the case of ***K.S. Puttaswamy and another (supra)*** has held that the right to privacy is a fundamental right. No doubt that the right to information is also a fundamental right. In case of such a conflict, the Court is required to achieve a sense of balance.

41. A perusal of the judgments of this Court cited supra would reveal that it has been held that though the concept of finality of judgment has to be preserved, at the same time, the

principle of *ex debito justitiae* cannot be given a go-bye. If the Court finds that the earlier judgment does not lay down a correct position of law, it is always permissible for this Court to reconsider the same and if necessary, to refer it to a larger Bench.

42. Without expressing any final opinion, *prima facie*, we find that the judgment of this Court in the case of ***Jayantilal N. Mistry (supra)*** did not take into consideration the aspect of balancing the right to information and the right to privacy. The petitioners have challenged the action of the respondent-RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions as contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers. The RBI has issued such directions in view of the decision of this Court in the case of ***Jayantilal N. Mistry (supra)*** and ***Girish Mittal (supra)***. As

such, the petitioners would have no other remedy than to approach this Court. As observed by Ranganath Misra, J. in the case of ***A.R. Antulay (supra)*** that, this being the Apex Court, no litigant has any opportunity of approaching any higher forum to question its decision. The only remedy available to the petitioners would be to approach this Court by way of writ petition under Article 32 of the Constitution of India for protection of the fundamental rights of their customers, who are citizens of India.

43. We, therefore, hold that the preliminary objection as raised is not sustainable. The same is rejected. I.A. No.51632 of 2022 in Writ Petition (Civil) No.1159 of 2019 and I.A. No.54521 of 2022 in Writ Petition (Civil) No.683 of 2021 are accordingly dismissed.

.....J.
[B.R. GAVAI]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI;
SEPTEMBER 30, 2022.