

Supreme Court of India

Before: Justice B.R. Gavai, Justice C.T. Ravikumar

HDFC BANK LTD. & ORS.

Versus

UNION OF INDIA & ORS.

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

30.09.2022

Right to Information Act, 2005, S.8, S.11 - Banking Regulation Act, 1949 - S.35, S.35(5) - Reserve Bank of India Act, 1934 - S.45NB, S.45NB(4) - Constitution of India, 1950 - Art.19(1)(a), Art.19(1)(d), Art.19(1)(g), Art.32, Art.137

(i) 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. [Para 40]

(ii) Finality of judgment and ex debito justitiae - 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-by - 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. [Para 41]

(iii) Constitution of India, Article 32 - Right of privacy - Right to information - Challenge to the action of the Reserve Bank of India in directing disclosure of confidential and sensitive information pertaining to their affairs, their employees and their customers under the Right to Information Act, 2005 - In view of the judgment of this Court in the case of *Jayantilal N. Mistry*, 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 - *Jayantilal N. Mistry* did not take into consideration the aspect of balancing the right to information and the right to privacy - Petitioners have challenged the action of the RBI, issuing directions to the 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 - RBI has issued such directions in view of the decision of this Court in the case of *Jayantilal N. Mistry* and *Girish Mittal* - As such, the petitioners would have no other remedy than to approach this Court - 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. *A.R. Antulay, referred.* (supra) [Para 42]

(iv) Mistake of court - This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions - 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. [Para 34]

(v) **Question of fact - Question of Law** - 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. *Union of India v. Major S.P. Sharma and others*, (2014) 6 SCC 351 . [Para 27, 28]

(vi) **Ex debito justitiae** - No man should suffer because of the mistake of the court - No man should suffer a wrong by technical procedure of irregularities - The rules of procedure are the handmaidens of justice and not the mistress of justice - 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. *A.R. Antulay*

(vii) **Practice and procedure** - Other remedies available to them in law - Writ petitioners/Banks were not parties in the case of *Jayantilal N. Mistry* - Earlier the Miscellaneous Applications filed by HDFC Bank and others for recall of the judgment and order in the case of *Jayantilal N. Mistry* were rejected by this Court vide order dated 28th April 2021, by passing the order "The dismissal of these applications shall not prevent the applicants to pursue other remedies available to them in law." - Court did not foreclose the right of the petitioners/Banks to pursue other remedies available to them in law - Present writ petitions inter alia, challenging the action of the respondent Reserve Bank of India in directing disclosure of confidential and sensitive information pertaining to their affairs, their employees and their customers under the Right to Information Act, 2005 which, in their submission, is otherwise exempt under Section 8 thereof - **Applications maintainable - Constitution of India, Art. 32.** [Para 37, 38]

Cases referred

Mistake of the 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 - No man should suffer because of the mistake of the Court. Rules of procedure are the handmaidens of justice and not the mistress of justice - - 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 - 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. *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602, *Sanjay Singh v. U.P. Public Service Commission, Allahabad*, (2007) 3 SCC 720, *Soni Vrajilal v. Soni Jadavji* [AIR 1972 Guj 148 : (1972) 13 Guj LR 555], *referred and relied* .

Mistake of the court - The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decreeholder or the objections raised by the judgment debtors. *Keshardeo Chamria v. Radha Kissen Chamria* [1953 SCR 136 : AIR 1953 SC 23] [Para 33]

Abuse of the process of the court - 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. Privy Council in *Debi Bakhsh Singh v. Habib Shah* [ILR (1913) 35 All 331], followed in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602. [Para 33]

Mistake of Court – To err is human, is the oftquoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.” *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602.[Para 33]

Actus curia neminem gravabit – 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. *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602. [Para 33]

Mistake of court – 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... Privy Council in *The Bolivar* [AIR 1916 PC 85] [Para 33]

Constitution of India, Article 32 – Writ of certiorari – 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. 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. 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. *Naresh Shridhar Mirajkar v. State of Maharashtra and Anr.*, (1966) 3 SCR 744 [Para 23]

Finality of the judgment – Mistake of court – Justice dispensation – 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. *Rupa Ashok Hurra v. Ashok Hurra and another*, (2002) 4 SCC 388 relied.[Para 30]

Held, 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. 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. 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. *Rupa Ashok Hurra v. Ashok Hurra and another*, (2002) 4 SCC 388 [Para 42]

Mistake of court – “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 – Lord Cairns in *Rodger v. Comptoir D’escompte De Paris* [(186971) LR 3 PC 465, 475 : 17 ER 120] [Para 31]
Ratio decidendi – Examination of – 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. *Sanjay Singh and another, Rupa Ashok Hurra* [(2002) 4 SCC 388] [Para 36]

Held,

“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 reexamination, 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 reexamined 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 subjectmatter of an earlier decision, is rejected.” [Para 35]

Maxim - ex debito justitiae - of or by reason of an obligation of justice : as a matter of right

Ex Debito Justitiae is a legal maxim, used in India, with the following meaning: From what is due to justice. A remedy which the applicant gets as a matter of right. Every court of plenary jurisdiction has power to correct ex debito justitiae its judgment and order to prevent abuse of its process and grave and palpable errors. (See *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1909.) The court is called upon to act ex debito justitiae to correct its own mistakes or orders inadvertently passed or to prevent gross miscarriage of justice. For that matter every authority is entitled to correct its own mistakes, and taking any other view is bound to work out gross injustice and result in procedural imbalance. (See *Chandrika Shah v. Addl. Member Board of Revenue* 1981 BBCJ 106.) Review is, therefore, resorted only where glaring omission or patent mistake or like grave error has crept in counter by judicial fallibility. (See *Sow Chandra Kanta v. Sheik Habib* AIR 1975 SC 1500.) Otherwise, the judgment pronounced by the court is final. A comprehensive list of defects that will attract ex debito justitiae relief cannot be drawn. It is sufficient to remember that the court can grant relief where there is some manifest illegality or want of jurisdiction in the earlier order or some palpable injustice is shown to have resulted. (*Isaacs v. Robertson* [1984] 3 All ER 140.) Such a power can be traced either to article 142 of the Constitution or to be powers, in the case of the Supreme Court, inherent in the court as the Apex Court and the guardian of the Constitution. For a complete list of maxims of law (besides Ex Debito Justitiae), see here (include their meanings and uses). (<https://india.lawi.asia/ex-debito-justitiae/>)

“As an obligation arising out of the justice of the matter” — an expression often used to describe a situation where judicial review is available automatically and will seldom be denied on any overriding discretionary basis. (<https://irwinlaw.com/cold/ex-debito-justitiae/>)

Cases referred to:

1.Paras 5, 7, 11, 13, 18, 19, 20, 37, 39, 42: *Reserve Bank of India v. Jayantilal N. Mistry*, (2016) 3 SCC 525

- 2.Paras 7, 17, 21, 42: *Girish Mittal v. Parvati V. Sundaram*, (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.Paras 8, 22: *Naresh Shridhar Mirajkar v. State of Maharashtra and Anr.*, (1966) 3 SCR 744
- 4.Paras 8, 15, 31, 42: *A.R. Antulay v. R.S. Nayak* , (1988) 2 SCC 602
- 5.Para 9: *Anil Kumar Barat v. Secretary, Indian Tea Association* , (2001) 5 SCC 42
- 6.Paras 10, 25: *Khoday Distilleries Ltd. v. Registrar General, Supreme Court of India*, (1996) 3 SCC 114
- 7.Paras 10, 26: *Mohd. Aslam v. Union of India*, (1996) 2 SCC 749
- 8.Paras 10, 27: *Union of India v. Major S.P. Sharma*, (2014) 6 SCC 351
- 9.Paras 10, 29, 36: *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388
- 10.Para 13: *Chief Information Commissioner v. High Court of Gujarat* , (2020) 4 SCC 702
- 11.Paras 14, 21: *Supreme Court Advocates-onRecord Association v. Union of India*, (2016) 5 SCC 1
- 12.Paras 14, 21, 40: *K.S. Puttaswamy v. Union of India* , (2017) 10 SCC 1
- 13.Paras 15, 35: *Sanjay Singh v. U.P. Public Service Commission, Allahabad* , (2007) 3 SCC 720
- 14.Para 16: *Thalappalam Service Cooperative Bank Limited v. State of Kerala* , (2013) 16 SCC 82
- 15.Para 17: *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi* , (2012) 13 SCC 61
- 16.Para 17: *Girish Ramchandra Deshpande v. Central Information Commissioner* , (2013) 1 SCC 212
- 17.Para 26: *Manohar Joshi v. Nitin Bhaurao Patil* , (1996) 1 SCC 169
- 18.Para 26: *S.R. Bommai v. Union of India* , (1994) 3 SCC 1
- 19.Para 29: *Union of India v. Raghubir Singh*, [(1989) 2 SCC 754]
- 20.Para 31: *Rodger v. Comptoir D'escompte De Paris*, [(1869) 71 LR 3 PC 465, 475 : 17 ER 120]
- 21.Para 31: *Soni Vrajilal v. Soni Jadavji*, [AIR 1972 Guj 148 : (1972) 13 Guj LR 555]
- 22.Para 33: *Montreal Street Railway Co. v. Normadin*, [1917 AC 170] (sic)
- 23.Para 33: *State of Gujarat v. Ramprakash P. Puri*, [(1969) 3 SCC 156 : 1970 SCC (Cri) 29 : (1970) 2 SCR 875]
- 24.Para 33: *Keshardeo Chamria v. Radha Kissen Chamria*, [1953 SCR 136 : AIR 1953 SC 23]
- 25.Para 33: *Debi Bakhsh Singh v. Habib Shah*, [ILR (1913) 35 All 331]

For the parties : Mr. Prashant Bhushan, Adv. Mr. Pranav Sachdeva, AOR Mr. Jatin Bhardwaj, Adv. Ms. Neha Rathi, Adv. Mr. O. P. Gaggar, AOR Mr. Divyanshu Sahay, Adv. Ms. Shradha Narayan, Adv. Mr. Akshay Sahay, Adv. Mr. Rajesh Kumar, Adv. Mr. Gaurav Goel, AOR Mr. Rajesh Kumar Gautam, AOR Mr. Anand Gautam, Adv. Mr. Nipun Sharma, Adv. Mr. Sachin Singh, Adv. Mr. Vidur Ahluwalia, Adv. Mr. Anant Vikram Singh, Adv. Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. Arjun Bhatia, Adv. Ms. Shubhra Kapur, Adv. Ms. Akshata Joshi, Adv. Mr. Mukul Rohatgi, Sr. Adv. Mr. Pranaya Goyal, AOR Mr. Firasat Ali Siddiqi, Adv. Mr. Sarfaraj Khan, Adv. Mr. Arvind Kumar, Adv. Mr. Vijay Pal, Adv. Mr. Pramod Kumar Singh, Adv. Mr. Ram Swarup Sharma, AOR Ms. Praveena Gautam, AOR Mr. Pawan Shukla, Adv. Mr. Aman Sharma, Adv. Mr. Raja Ram, Adv. Mr. Aman Rastogi, Adv. Mr. Dushyant Dave, Sr. Adv. M/s. Lex Regis Law Offices, AOR Mr. Raj Bahadur Yadav, AOR Mr. Rakesh Dwivedi, Sr. Adv. Ms. Misha, Adv. Mr. Siddhant Kant, Adv. Ms. Mahima Sareen, Adv. Moulshree Shukla, Adv. Mr. Eklavya Dwivedi, Adv. Mr. Rahul Gupta, Adv. Mr. Krishnan Singhal, Adv. Mr. S. S.

Shroff, AOR Mr. Jaideep Gupta, Sr. Adv. Mr. Kuldeep S. Parihar, Adv. Mr. H. S. Parihar, AOR Ms. Ikshita Parihar, Adv. Mr. Pranaya Goyal, AOR Mr. K.V. Vishwanathan, Sr. Adv. Mr. Aman Raj Gandhi, AOR Mr. Pranav Sachdeva, AOR Mr. Sanjay Kapur, AOR Mr. Prashant Bhushan, AOR

JUDGEMENT

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 v. Jayantilal N. Mistry*, (2016) 3 SCC 525 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 submitted that this Court, in the case of *Girish Mittal v. Parvati V. Sundaram*, (2019) 20 SCC 747 = Contempt Petition (C) No. 928 of 2016 in Transfer Case (C) No. 95 of 2015, decided on 26th April 2019, 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 v. State of Maharashtra and Anr.*, (1966) 3 SCR 744 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 v. R.S. Nayak*, (1988) 2 SCC 602 to contend that the judicial proceedings in this Court are not subject to the writ jurisdiction thereof.
9. Mr. Prashant Bhushan further submitted that this Court in the case of *Anil Kumar Barat v. Secretary, Indian Tea Association*, (2001) 5 SCC 42 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. v. Registrar General, Supreme Court of India*, (1996) 3 SCC 114, *Mohd. Aslam v. Union of India*, (1996) 2 SCC 749 and *Union of India and others v. Major S.P. Sharma*, (2014) 6 SCC 351 and the judgment of a Five-Judge Bench of this Court in the case of *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388 to buttress his submissions.

11. Mr. Bhushan further submitted that in the case of *Jayantilal N. Mistry* (supra), several Miscellaneous 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 v. High Court of Gujarat*, (2020) 4 SCC 702. 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 as implicit fundamental right by a Five Judge Constitution Bench of this Court in the case of *Supreme Court Advocates-on Record Association v. Union of India*, (2016) 5 SCC 1. 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 v. Union of India*, (2017) 10 SCC 1, 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 v. U.P. Public Service Commission, Allahabad*, (2007) 3 SCC 720 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 v. State of Kerala*, (2013) 16 SCC 82 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 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 online 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 v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61 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 v. Central Information Commissioner*, (2013) 1 SCC 212 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 parties in the case of *Jayantilal N. Mistry* (supra). He submits that subSection (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 subsection (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 AdvocatesonRecord Association and another* (supra). The judgment of this Court in the case of *Supreme Court AdvocatesonRecord 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 NineJudge 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.

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 interpartes, and those which are not interpartes 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.”

[emphasis supplied]

23. It could thus be seen that the NineJudge Bench of this Court, speaking through P.B. Gajendragadkar, C.J., 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 wellrecognised 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."
[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 v. Nitin Bhaurao Patil*, (1996) 1 SCC 169 was in conflict with the Constitution Bench judgement of this Court in the case of *S.R. Bommai and others v. Union of India*, (1994) 3 SCC 1. 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. 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. 76667, 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 extralegal 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. 5859).”

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.

xxx xxx xxx

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* [(186971) LR 3 PC 465, 475 : 17 ER 120] observed thus:

“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 1621984, 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:

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* [(196971) 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 decreeholder 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 oftquoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate 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 reexamination, 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 reexamined 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 subjectmatter 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 reexamination, 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.