

(2014) 07 GUJ CK 0037

In the Gujarat High Court

Case No : Letters Patent Appeal No. 755 of 2014 in Special Civil Application No. 12647 of 2013 and Civil Application No. 6885 of 2014 in Letters Patent Appeal No. 755 of 2014

Amreli Jilla Madhyasth

APPELLANT

Vs

Meghrajbhai Mohanbhai Sagar

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 07 GUJ CK 0037

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : P.Y. Divyeshvar, Advocate for the Appellant; Nasrin N Shaikh, Advocate for the Respondent

Judgement

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V.M. Sahai, J.—Mrs. Nasrin N. Shaikh, learned advocate for the respondent No. 1 has sent her sick-note. We have heard Mr. P.Y. Divyeshvar, learned advocate appearing for the appellant.

2. By way of the present Letters Patent Appeal, the appellant-original petitioner has challenged the order dated 05.05.2014 passed by the learned Single Judge in Special Civil Application No. 12647 of 2013, by which, the learned Single Judge was pleased to dismiss the writ petition.

3. In the writ petition, the award of the Industrial Court, Rajkot dated 18.05.2013 in Appeal (IC) No. 08 of 2011 was challenged by the appellant-original petitioner.

4. In our opinion, the learned Single Judge while dismissing the writ petition has not issued a writ of certiorari and therefore, this Letters Patent Appeal is not maintainable in view of the Five Judges' Full Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, ,

which is held as under:

(M) (x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court.

To put it very explicitly, take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

5. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law. Interim relief, if any, stands vacated.

6. In view of dismissal of the present Letters Patent Appeal, Civil Application No. 6885 of 2014 also stands disposed of.