
(2019) 07 PAT CK 0158

In the Patna High Court

Case No : Letters Patent Appeal No. 1713 Of 2018 In Civil Writ Jurisdiction Case
No. 10646 Of 2016

Bineeta Devi

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Bihar Cooperative Societies Act, 1935 — Section 41(5), 41(6), 48

Citation : (2019) 07 PAT CK 0158

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Amaresh Kumar

Final Decision : Allowed

Judgement

I.A. No. 246 of 2019

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.

L.P.A. No. 1713 of 2018

Heard learned counsel for the appellant.

The appeal questions the correctness of the judgement of the learned Single Judge dated 9th of October, 2018 contending that the learned Single Judge appears to have overlooked the facts stated by the appellant-petitioner in I.A. No.4604 of 2017 and, therefore, has erroneously relegated the appellant to approach the Registrar of the Co-operative Societies, Bihar for redressal of grievances.

We have examined the records and we find that I.A. No.4604 of 2017 was filed by the appellant-petitioner bringing on record the order of the Registrar dated 3rd of May, 2017 whereby the Registrar had refused to dissolve the

management. This order was on record on the date when the impugned judgement was passed.

We further find that the impugned judgement has referred to Section 48 of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 1935 Act) as the provision under which the Registrar would be authorized to proceed in the matter. However, this does not appear to be the correct position, inasmuch as a perusal of the order dated 3rd of May, 2017 demonstrates that the Registrar proceeded to pass an order in terms of Section-41(5) of the 1935 Act. Consequently, there is an error in the judgement as the appellant could not have been relegated to the Registrar for passing of any order in terms of Section-48, more so when an order had already been passed under Section-41(5) of the Act. We, however, find that in terms of Section-41(6), an order passed by the Registrar is appealable before the State Government. In all probability, the appellant could have succeeded had he promptly filed an appeal in terms of Section-41(6) of the 1935 Act.

There is nothing on record to indicate that the appellant had approached the State Government and the appeal is required to be filed within 30 days.

In these circumstances, the appellant did have an alternative remedy of filing an appeal under Section-41(6) which has not been availed of. We are, therefore, not inclined now to entertain this appeal or even interfere with the impugned judgement as the appellant himself has not availed of the remedy which ought to have been availed under the provisions aforesaid.

The appeal is accordingly consigned.