

(2022) 12 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Appeal No. 621 Of 2022

Daljeet Kaur

APPELLANT

Vs

Indira Deshlahra

RESPONDENT

Date of Decision : 08-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227
High Court of Chhattisgarh Rules, 2007 — Rule 158(10)(b)
Code Of Civil Procedure, 1908 — Section 47, 151
Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2(1)

Citation : (2022) 12 CHH CK 0013

Hon'ble Judges : Arup Kumar Goswami, CJ;Arvind Singh Chandel, J

Bench : Division Bench

Advocate : H.B. Agrawal, Swati Agrawal, Ashish Surana

Final Decision : Dismissed

Judgement

1. Heard Mr. H.B. Agrawal, learned senior counsel, assisted by Ms. Swati Agrawal, learned counsel for the appellant. Also heard Mr. Ashish Surana, learned counsel, appearing for the respondent.
2. This writ appeal is presented against an order dated 22.09.2022 passed by the learned Single Judge in WP(227) No. 550 of 2022.
3. In the writ petition challenge was made to an order dated 12.08.2022 passed by the Sixth Civil Judge, Class-II, Durg in Execution Case No.01/17.
4. The respondent had filed a suit being Civil Suit No. 39-A/2010 against the present appellants and the suit was decreed by a judgment and decree dated 13.03.2013. The aforesaid decree was affirmed by the Sixth Additional District Judge, Durg in Civil Appeal No. 41-A/13 by a judgment dated 29.07.2016. The second appeal preferred being SA No. 507 of 2016 was dismissed by this Court vide judgment dated 18.07.2019.
5. An application for amendment was filed by the decree holder for correcting the

name of "Dalbir Singh" as "Prabindar Singh" and also for submitting a map.

6. The petitioner had filed an application under Section 47 read with 151 of the Code of Civil Procedure to drop the proceedings.

7. The learned Executing Court by the order dated 12.08.2022 allowed the application filed by the decree holder.

8. It is against that order dated 12.08.2022, the application under Article 227 of the Constitution of India was filed before this Court and which was dismissed by the learned Single Judge as noticed above.

9. Mr. Ashish Surana submits that this appeal is not maintainable in view of the provisions contained in Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, for short, the Act of 2006, which specifically provides that no appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

10. Mr. Agrawal submits that in view of Rule 158(10)(b) of the High Court of Chhattisgarh Rules, 2007, for short, 'the Rules of 2007', this appeal is maintainable.

11. What is important is to note that the Hon'ble Supreme Court in the case of Radhey Shyam and Another v. Chhabi Nath and Others, reported in (2015) 5 SCC 423, had held that judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. It was laid down that challenge to judicial orders would lie by way of appeal or revision or under Article 227 and not by way of a writ under Article 226 and 32.

12. There is no dispute that the order dated 12.08.2022 is a judicial order and therefore, there is no manner of doubt that the application filed by the petitioner under Article 227 was decided as an application under Article 227 of the Constitution of India.

13. Section 2 (1) of the Act of 2006 reads as follows:

"2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction. - (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original Jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India."

14. A perusal of the above would go to show that no appeal shall lie before Division Bench against an order passed by a learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India to the

Division Bench comprising of two judges of the High Court.

15. Rule 158 (10)(b) of the Rules of 2007 reads as follows:

“158. Case Flow Management Rules in the High Court:-

Division of Cases into different tracks:

xxx xxx xxx

(10) Writ appeals.- An appeal to a Division Bench from judgment of a Single Judge may lie in the following cases:

xxx xxx xxx

(b) appeals from final judgment of a Single Judge in original jurisdiction:

xxx xxx xxx”

16. As noted earlier, the learned Single Judge did not exercise original jurisdiction while deciding the validity of the judicial order dated 12.08.2022. The same was done under the supervisory jurisdiction under Article 227 of the Constitution of India and therefore, submission of Mr. Agrawal is misconceived.

17. In that view of the matter, this appeal is not maintainable and resultantly, the same is dismissed.