

(2019) 09 PAT CK 0066

In the Patna High Court

Case No : Miscellaneous Appeal No. 42 Of 2014

National Highway Authority Of India Through

APPELLANT

Vs

Shambhu Kumar Das

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(1)(e), 34

Civil Courts Act, 1977 — Section 18

Code Of Civil Procedure, 1908 — Section 15

Citation : (2019) 09 PAT CK 0066

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Mithilesh Kumar, Upendra Yadav, Manoj Kumar Gupta

Final Decision : Disposed Off

Judgement

Heard learned counsel for the parties.

This appeal has been filed on behalf of National Highway Authority of India Ltd. (NHAI) for setting aside the order dated 19.07.2013 passed in M.A. No. 13 of 2011 by which learned Sub-judge-I, Supaul, has dismissed the miscellaneous case filed on behalf of appellant under Section 34 of the Arbitration and Conciliation Act, 1996.

A Division Bench of this Court in the case of Shivam Housing Private Ltd. & Ors Vs. Thakur Mithilesh Kumar Singh & Ors since reported in 2015(3) PLJR 876, has held that "Section 18 of the Civil Courts Act, inter alia, provides the extent of original jurisdiction of District, Subordinate Judge to all original suits cognizable by civil courts subject to Section 15 of the Code of Civil Procedure which provides that the suit shall be instituted in the court of the lowest grade competent to try it. The scheme of the Act, however, is contrary to the scheme of the Code of Civil Procedure which requires a suit to be instituted, tried by the court of lowest grade competent to try the suit, as in terms of Section 34 read with sub-section (1)(e) of Section 2 the arbitral award is required to be assailed before the

Principal Civil Court of original jurisdiction which will not include any civil court of a grade inferior, as such, in terms of the Act it is only the District Judge who has jurisdiction to consider the challenge made to the arbitral award."

In view of the above, the order passed by learned Sub-judge is without jurisdiction, accordingly, the order as impugned in the appeal is set aside and matter is remitted to the court of District Judge, who has been held to be the Principal Civil Court of original jurisdiction, who shall consider the application of appellant under Section 34 of the Arbitration Act and decide the matter after hearing all the parties preferably within two months from the date of production/ receipt of a copy of the order passed by this Court.

Let the LCR of this case be returned to the court of District Judge, Supaul, forthwith.

With the aforesaid observation and direction, this appeal stands disposed of.