

(2019) 01 PAT CK 0038

In the Patna High Court

Case No : Letters Patent Appeal No. 805 Of 2016, C.W.J.C. No. 4345 Of 2015

Raj Kumar Sharma @ Raj And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Bihar Cooperative Societies Act, 1935 — Section 6(1)(2), 40, 40(3)

Citation : (2019) 01 PAT CK 0038

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

Bench : Division Bench

Advocate : Mira Kumari, Niraj Kumar, Shailendra Kumar Singh, Rakesh Kumar Jha

Final Decision : Dismissed

Judgement

1. Heard Smt. Mira Kumari, learned counsel for the appellants, Shri Niraj Kumar, Assistant Counsel to Government Pleader No. 10, Shri Shailendra Kumar Singh for the Bihar State Food & Civil Supplies Corporation Ltd. And Shri Rakesh Kumar Jha for the Cooperative Bank.

2. The learned Single Judge in a matter arising out of surcharge proceedings under Section 40 of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as "1935 Act") has declined to entertain the petition on the ground of availability of the alternative remedy of appeal to the appellants in terms of Section 40 (3) of the 1935 Act.

3. Learned counsel for the appellants has urged that in the instant case the District Co-operative Officer has passed the impugned order dated 19th January, 2015 who, according to the appellants, is not the Registrar and, therefore, an appeal would not lie against such an order and the writ petition ought to have been entertained as the order was without jurisdiction.

4. Learned counsel for the respondents have invited attention of the Court to the notification dated 26th December, 2008, whereby the power to the District Co-

operative Officer stands conferred in terms of Section 6(1) read with sub-section (2) thereof to exercise all such powers except in relation to Central Co-operative Banks.

5. Admittedly, the appellants are not a Central Co-operative Bank and, therefore, the District Co-operative Officer did have the jurisdiction to proceed in the matter and appeal, therefore, against such an order would be maintainable in view of the provisions of Section 40(3) of the 1935 Act. There is no error, much less a legal error, in the impugned order so as to warrant interference. The appeal lacks merits and is, accordingly, rejected.