
(1999) 03 PAT CK 0049

In the Patna High Court

Case No : Letters Patent Appeal No. 170 of 1998 (R)

Ramswarup Agarwalla

APPELLANT

Vs

Banwari Lal Agarwalla

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11, 14, 14(8)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 3 PLJR 403

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : R.K. Merathia, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. Whether an appeal under Clause 10 of the Letters Patent against an order passed in exercise of revisional jurisdiction is maintainable, is a question involved in this appeal.
2. The sole Respondent in this appeal filed a Title Suit No. 53 of 1912 for specific performance of contract to sale the shop room in question against the Defendant-Appellant. The suit was dismissed by the trial Court. Being aggrieved the Plaintiff- Respondent filed First Appeal No. 149 of 1995(R) before this Court.
3. The Appellant, who is the landlord of the shop room in question, filed an Eviction Suit No. 21 of 1990 u/s 11, read with Section 14, of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act) seeking eviction of the Respondent to this appeal, who was a tenant of the said shop. That suit was decreed. The Respondent filed a civil revision against the said order before this Court.
4. Both the first appeal and the civil revision were decided by the learned single Judge by a common judgment dated 19.3.1998, whereby the First Appeal No. 149 of 1995(R) was allowed, the judgment and decree passed in Title Suit No. 53

of 1991 was set aside and the suit for specific performance was decreed. The Civil Revision No. 293 of 1995(R) filed by the Respondent was also allowed and the judgment and decree passed in Eviction Suit No. 21 of 1990 was set aside

5. The instant appeal has been filed under Clause 10 of the Letters Patent against that part of the judgment of the learned single Judge, whereby and whereunder the civil revision filed by the Respondent was allowed and the order of eviction passed against him u/s 14 of the Act has been set aside.

6. Clause 10 of the Letters Patent, which provides for Letters Patent Appeal from the judgment of the single Judge has expressly excluded filing of such an appeal against "an order made in the exercise of revisional jurisdiction". No Letters Patent Appeal, therefore, is maintainable against that part of the judgment of the learned single Judge whereby and whereunder the revision filed by the Respondent was allowed.

7. Learned Counsel for the Appellant has, however, made two submissions in support of his contention to the effect that such an appeal is maintainable under Clause 10 of the Letters Patent, namely, (i) Letters Patent Appeal is barred against "an order made in the exercise of revisional jurisdiction", but such an appeal is maintainable if filed against the judgment given in the revision, and (ii) Clause 10 of the Letters Patent excludes filing of appeal against an order/judgment of the learned single Judge passed in revision filed u/s 115 of the CPC only. Both these submissions cannot be accepted.

8. Section 14(8) proviso of the Act under which Civil Revision No. 293 of 1995(R) was filed in this Court by the Respondent is reproduced below:

14. Special Procedure for disposal of cases for eviction on ground of bonafide requirement.--

XX XX XX XX XX

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with the procedure specified in this section:

Provided that on an application being made within sixty days of the date of the order of eviction, the High Court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

xx xx xx xx xx.

9. Under Clause 10 of the Letters Patent, appeal lies from the judgment of the single Judge. Such an appeal can also be filed against an order which amounts to judgment. In this connection reference may be made to *Shah Babulal Khimji v. Jayaben D. Kania and Anr.* AIR 1981 SC 1986.

But from perusal of Clause 10 it is apparent that the order/judgment passed in

exercise of revisional jurisdiction cannot be challenged in the Letters Patent jurisdiction. It is immaterial whether such order amounts to judgment or not.

10. As regard the second submission, it may be mentioned that no such distinction can be made as suggested by the learned Counsel. The order "made in the exercise of revisional jurisdiction" is immune from being challenged by way of letters Patent Appeal. Whether such a jurisdiction has been conferred by the CPC or by any other enactment is not relevant. What is relevant is that the order must have been passed in the revisional jurisdiction.

11. This appeal is, therefore, dismissed as not maintainable.