
(2007) 09 PAT CK 0102
In the Patna High Court

Shiv Chandra Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Citation : (2007) 09 PAT CK 0102

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—Office report is that the civil revision application against refusal to grant temporary injunction under Order 39, Rule 2A would not lie to this Court, as against an order granting or refusing to grant injunction an appeal is provided in terms of Order 43, Rule 1 (r) of the CPC and the said miscellaneous appeal would lie to the District Judge or this Court, subject to valuation.

2. Learned Counsel for the petitioner submits that in view of Section 115(1) CPC and the judgment of the Apex Court in the case of Smt. Vidya Vati Vs. Shri Devi Das, the revision is maintainable in this Court because considering the valuation no appeal would lie to this Court. In other words, it is submitted that though an appeal lie to the District Judge, no appeal lie to this Court and that being so in terms of Section 115(1) CPC, revision is maintainable.

3. I am afraid the lawyer is not correct.

The judgment of the Apex Court was rendered on 25-11-1976 (reported in Smt. Vidya Vati Vs. Shri Devi Das, examining the validity of the High Court order dismissing the civil Court revision on 28-4-1975. The law, as then stood was as laid down by the Apex Court but since then there has been a material change whereby sub-section (2) was inserted to Section 115 CPC by Amendment Act 104 of 1976 with effect from 1-2-1977. The said sub-section now clearly provided that under revisional jurisdiction the High Court shall not vary or reverse any decree or order against which an appeal lay either to the High Court or to any Court subordinate thereto. Thus even if a miscellaneous appeal is

available to the District Judge against an order, the revision to the High Court would not lie.

4. The law having materially been altered, the judgment of the Apex Court has no application. It is thus held that the revision application is not maintainable and the petitioner, if so advised, may prefer miscellaneous appeal before the District Judge.

5. This revision application is not maintainable and is dismissed accordingly.