

(2018) 04 RAJ CK 0169
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 657 of 2018

Smt. Pooni Devi @APPELLANT@Hash Smt. Varsa

Date of Decision : 11-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11
Rajasthan High Court Rules, 1952 — Rule 134
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 04 RAJ CK 0169

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : H.R. Soni, K.K. Bissa

Final Decision : Dismissed

Judgement

The instant special appeal has been filed by appellant, Smt. Pooni Devi, against the judgment dated 14.03.2018 passed by learned Single Judge in

SBCWP No.7761/2017 whereby writ petition filed by the respondent/writ-petitioner was allowed and the learned Single Judge set aside the order

dated 26.05.2017 passed by Civil Judge (Sr. Division) Santhore whereby application filed by the present appeal (defendant) under Order 7 Rule 11

CPC was allowed and election petition filed by respondent/writ-petition was dismissed.Â

Â At the threshold, learned counsel for the respondent/writpetitioner submits that this appeal is not maintainable in view of judgment rendered by

Division Bench of this Court in DBSAW No.345/2015- Hindustan Petroleum Corporation Ltd. Vs. M/s Shyam Narayan Mehra & Brothers, decided

on 29.07.2015 whereby the Division Bench of this Court held that intra-court appeal against the order of learned Single Judge in exercise of powers of

superintendence under Article 227 of the Constitution of India is not

maintainable. In the instant case, writ petition was filed by the respondent/writ-petitioner under Article 227 of the Constitution of India and as per the present appeal is not maintainable.Â

Â Learned counsel for the appellant/non-petitioner while giving reply to said preliminary objection with regard to maintainability of the instant appeal

argued that in the case of Babulal Jain Vs. District Judge, Bikaner & Ors. reported in 2016 Lawsuit (Raj.) 1599, the Division Bench of this Court

interfered in the matter and adjudicated the order of learned Single Judge passed under Article 227 of the Constitution of India, therefore, this appeal is

maintainable. Learned counsel for the appellant further argued that the Election Tribunal is not a civil court, therefore, the ratio of judgment in the case

of Hindustan Petroleum Corporation Ltd. (supra) will not apply.Â

Â After hearing the learned counsel for the parties, we have perused the impugned order in this appeal. There is no dispute that writ petition was filed

under Article 227 of the Constitution of India by the respondent/writ-petitioner in which the order passed by the Election Tribunal upon application filed

under Order 7 Rule 11 CPC was passed and that order was under challenge in the writ petition.Â

Â In the case of Hindustan Petroleum Corporation Ltd. (supra), the question with regard to maintainability of appeal was decided by the Division

Bench of this Court while considering Rule 134 of the Rajasthan High Court Rules, 1952 and specific adjudication was made that while considering all

relevant judgments while holding that intra-court appeal is not maintainable. However, unfortunately, the said judgment was not brought to the notice

of the Division Bench of this Court in the case of Babulal Jain (supra) because question of maintainability of special appeal has been decided by the

Division Bench of this Court in the case of Hindustan Petroleum Corporation Ltd. (supra), in which following adjudication was made by the Division

Bench of this Court, which reads as infra: -

Â 13. Learned counsel for the appellant, on the other hand, has relied on the judgment of the Full Bench of this Court in Ramesh Chand Tiwari

V/s Board of Revenue and ors. (AIR 2005 Raj. 208), in which the Full Court answered the questions referred to it in paragraph 29 as follows:-

29. We sum up our conclusion, thus:-

(i) The power of superintendence conferred on the High Court under Article 227

of the Constitution is always in addition to the revisional jurisdiction.

It is wider than one conferred by Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be

found in certiorari jurisdiction. Jurisdiction under Article 227 is not an original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction.

(ii) Any person desiring to prefer intra-court appeal from the judgment/order of the Single Judge, may present the same before the Division Bench but

if the Division Bench finds that the judgment/order of the Single Judge was rendered purely in exercise of revisional jurisdiction, the intra-court appeal

shall stand dismissed as not maintainable. Judgments/orders passed by the Single Judge in exercise of wider supervisory jurisdiction under Article 227

are amenable to intra-court appeals.â??

14. Reliance has also been placed by learned counsel for the appellant on the judgment of the Supreme Court in *M.M.T.C. Limited V/s*

Commissioner of Commercial Tax and Ors. (AIR 2009 SC 1349) and the Division Bench judgment of this Court in *Kartar Singh V/s Board of*

Revenue & ors. (AIR 2010 Raj.136), which had distinguished the judgment of this Court in *Sukh Dev V/s Prakash Chandra* (supra). It is

submitted that the High Court may not go merely by the nomenclature of the writ petition filed under Article 226 or 227 of the Constitution of

India, but It should consider the controversy involved and the prayers sought and where the prayers were made to quash the impugned order

passed by the Tribunal, the Special Appeal was maintainable. The judgment arising out of the orders passed by the Assistant Commissioner,

Commercial Taxes was held to be amenable both under Article 226 or 227 of the Constitution of India and the Court should see the substance of

the case and not the nomenclature of the petition. The Supreme Court in *M.M.T.C. Ltd. V/s Commissioner of Commercial Tax & ors.* (supra) held

as follows:-

â??In addition, the High Court seems to have gone by the nomenclature, i.e. the description given in the writ petition to be one under Article 227 of

the Constitution. The High Court did not consider the nature of the controversy and the prayer involved in the writ petition. The prayer was to quash

the order of assessment passed by the Asstt.CCT levying purchase tax as well as entry tax. Therefore, the order of the High Court that LPA was not

maintainable was erroneous and not justified; same, therefore, set aside.â??

15. We have considered the submissions and find that there is a clear bar of filing intra-court Special Appeal under Rule 134(i) of the Rules of 1952,

against the judgment or final order (not being a Judgment passed in the exercise of appellate Jurisdiction in respect of a decree or order made in the

exercise of appellate Jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise of revisional

Jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence or in the exercise of criminal

Jurisdiction) of one Judge of the High Court.â? The Rule is more than clear that where the High Court had exercised the power of superintendence in

a writ petition, which is vested in it under Article 227 of the Constitution of India, in a matter arising out ofâ? theâ? orders of the Rent Tribunal and

Appellate Rent Tribunal in a landlord-tenant dispute, the exercise of power wouldâ? be under Article 227 and not under Article 226, as in the case of

power under Article 226 of the Constitution, the High Court, in view of the pronouncements of the Supreme Court in Shaliniâ? Shyam Shetty V/s

Rajendra Shankar Patilâ? (supra) and Jacky V/s Tiny Alias Antony and ors. (supra),â? could not have entertained such prayers under Article 226 of

the Constitution.â?

16. The legal position, In view of the judgments of the Supreme Court in Shaliniâ? Shyam Shetty V/s Rajendra Shankar Patilâ? (supra) and Jacky V/s

Tiny Alias Antony and ors.â? (supra), is now settled and thus, since theâ? appeal is not a matter of right andâ? can be filed only if there is a statutory

provision, the intra-court Special Appeal against the order of learned Single Judge passed in exercise of the power of superintendenceâ? under Article

227, is not maintainable,â? â? in view of Rule 134(i) of the Rules of 1952, which clearly bars the filing of Special Appeal against the judgment of the

High Court rendered in exercise of power under Article 227 of the Constitution.

17. The Special Appeal is held to be not â? maintainable, and is accordingly dismissed.

Accordingly, and in view of above judgment passed by thisâ? Court in the case of Hindustan Petroleum Corporation Ltd. (supra), the instant special

appeal filed against the order of learned Single Judge, is hereby dismissed as not maintainable.