(2018) 03 RAJ CK 0222

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 562 of 2017

Smt. Rami @APPELLANT@Hash Smt. Laxmi

Date of Decision : 20-03-2018

Acts Referred:
Rajasthan Tenancy Act, 1955 — Section 230
Indian Evidence Act, 1872 — Section 65
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 03 RAJ CK 0222

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

Bench : Division Bench

Advocate : Rajendra Choudhary, C.R. Jakhar

Final Decision : Dismissed

Judgement

Mr. G.K. Vyas, J.

The instant special appeal has been filed by the appellant against the order dated 20.03.2017 passed by learned Single Judge, whereby the writ petition

filed by the appellant under Article 227 of the Constitution of India against the order dated 03.02.2015 passed by Board of Revenue, Ajmer whereby

revision petition filed by appellant (respondent No.3 in writ petition), Smt. Rami, under Section 230 of the Rajasthan Tenancy Act, 1955 was accepted

and the order dated 15.12.2014 passed by S.D.O., Pali rejecting application filed by the respondents under Section 65 of the Evidence Act, 1872 was

set aside and the respondent was permitted to lead secondary evidence.

Â The learned Single Judge after considering the entire facts of the case allowed the writ petition and quashed the order passed by the Board of

Revenue dated 03.02.2015 while exercising power under Article 227 of the Constitution of India.

Â In our opinion against the order passed in writ petition filed under Article 227 of the Constitution of India, special appeal is not maintainable in view

of judgment rendered by this Court 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. The following adjudication was made by this Court in the

aforesaid judgment:-Â

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:-

â?? 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 appellantÂ on the judgment of the Supreme Court in M.M.T.C. Limited V/s

Commissioner of Â 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 CourtÂ inÂ Â Sukh Dev V/s Prakash Chandra (supra). It is

submitted that the High Court may notÂ go merely by the nomenclature of the writ petitionÂ filed under Article 226 or 227 of the Constitution of

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

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

Commercial Taxes was held to be amenableÂ 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 inÂ 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. TheÂ 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 Â 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 maintainable, and is accordingly dismissed.â??

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.Â

