

(2019) 07 PAT CK 0312

In the Patna High Court

Case No : Letters Patent Appeal No. 1467 Of 2016 In Civil Writ Jurisdiction Case
No. 19103 Of 2010

State Of Bihar Through The District Magistrate And Ors

APPELLANT

Vs

Virendra Kumar Verma

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 PAT CK 0312

Hon'ble Judges : Jyoti Saran, J;Partha Sarthy, J

Bench : Division Bench

Advocate : Sanjay Kumar

Final Decision : Allowed

Judgement

Heard Mr. Anjani Kumar, learned AAG 4 for the State. Though served, there is no representation on behalf of the respondent.

It is feeling aggrieved by the judgment and order dated 12.3.2015 of a learned Single Judge in C.W.J.C. No.19103 of 2010 that the State as appellant is before this Court. From the ordersheet it transpires that it is bearing note of the issue raised by Mr. Anjani Kumar, learned counsel for the appellant to question the judgment and order of the learned Single Judge dated 12.03.2015 passed in C.W.J.C. No.19103 of 2010 relying upon the judgment of the Supreme Court reported in AIR 1991 SC 2251 (Ghan Shyam Das Gupta & Anr. Vs.Anant Kumar Sinha & Ors.) more particularly, the opinion expressed in paragraph 8 on the issue of execution of decree of a Civil Court that we issued notice to the respondent-writ petitioner and though the respondent has registered appearance through counsel whose name also reflects in the daily cause list but when the matter is listed after service of notice, on 01.04.2019 for consideration of the petition for condonation of delay, there was no representation on his behalf and even today when the matter is posted after condonation of delay for consideration of the issue on merits there is again none appearing to defend the

respondent.

The issue raised by Mr. Anjani Kumar is plain and simple and that is; whether in view of a complete scheme provided under the Code of Civil Procedure for execution of a decree, there was any occasion for the learned Single Judge to direct the State authorities to make available supportive administrative machinery for executing the decree in Title Suit No. 41 of 1977 and Title Suit No. 116 of 1978. It is because such a direction was issued by the learned Single Judge that the State is in appeal before us and for answering the issue raised we would simply refer to the opinion of the Supreme Court expressed in paragraph 8 of the judgment rendered in the case of Ghan Shyam Das Gupta (*supra*) to express disagreement with the opinion of the learned Single Judge. The relevant extract of the opinion of the Supreme Court present at paragraph 8 of the judgment runs under:

"8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a Civil Court or to deny defences legitimately open in such actions. As was observed in *State of Andhra Pradesh versus Chitra Venkata Rao* (1976)¹ SCR 521:(AIR 1975 SC 2151) the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like an appellate Court So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of O.XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the Civil Court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting (relief) to a judgment-debtor or a claimant- objector can be justified. The Rr.97 to 106 of O.XXI envisage questions as in the present appeal to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. The High Court, in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the Civil Court."

The legal position so well settled by the Supreme Court on such matters perhaps, it has escaped the notice of the learned Single Judge to record his opinion which is put to challenge before us.

For the discussions above and while expressing disagreement, we set aside the judgment and order of the learned Single Judge passed in C.W.J.C. No.19103 of 2010 but while doing so we would allow the writ petitioner to take recourse to such remedy as may be available to him in law.

The appeal is allowed with the observations above.