
(2012) 08 PAT CK 0055
In the Patna High Court
Case No : LPA No. 1166 of 2012

Suresh Prasad Gupta and Others	Vs	APPELLANT
Shyam Sundar Tibrewal and Others		RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 2 PLJR 198

Hon'ble Judges : Vikash Jain, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Rudra Deo Kumar Sinha, for the Appellant; Yogendra Pd. Sinha for the State, Najmul Hoda and Pravin Kumar Gupta for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard the parties in respect of objection raised by the stamp reporter regarding maintainability of this appeal which is directed against the order dated 12.4.2012 passed by a learned single Judge of this court in writ petition bearing CWJC No. 5193 of 2009 Ed.?Reported in 2012(3) PLJR 903. No doubt the writ petition is labeled under Article 226 of the Constitution of India but it was directed against an order dated 21.2.2009 passed by the trial court in Title Eviction Suit No. 1 of 2006 whereby petition filed u/s 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 was rejected. Admittedly, no revision application could be maintained against the order dated 21.2.2009 in view of proviso to Section 115 of the Civil Procedure Code. Hence, the respondent No. 1 preferred the aforesaid writ petition which has been allowed. We are not concerned with the merits of that order at this stage because the issue to be decided is whether a Letters Patent Appeal is maintainable against the order of the learned single Judge. The controversy as to whether civil revision application is maintainable against orders which do not dispose of the suit or proceeding finally was decided by a Division Bench of this court recently in

the case of Durga Devi and Others Vs. Vijay Kumar Poddar and Others . The Division Bench while holding that no revision application was maintainable against orders which could not have decided the suit or proceeding finally, further examined the issue whether in such a case a petition would lie under Article 227 or under 226 of Constitution of India before the High Court. In paragraph 8 of that judgment the Division Bench extracted paragraph 6 of judgment of the Apex Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, . In that paragraph the Apex Court has considered the same very question and has held that where remedy for filing a revision before the High Court u/s 115 of CPC has been barred by enactment, only in such cases a petition under Article 227 of Constitution of India would lie and not under Article 226 of Constitution of India. An illustration was also furnished by the Apex Court that where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected and remedy of revision stands barred, in such a situation a writ petition under Article 227 of Constitution of India would lie and not under Article 226 of Constitution of India. After discussing the law on the subject, finally the Division Bench held in paragraph 40 that the Apex Court has cleared the position in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, that in appropriate cases within the parameters laid down in that judgment the High Court could interfere in such matters in exercise of power under Article 227 of Constitution of India.

2. Following the long settled view that no Letters Patent Appeal is maintainable against orders passed in exercise of power under Article 227 of Constitution of India and relying upon the decision in the case of Durga Devi vs. Vijay Kumar Poddar (supra) several orders have been passed by Division Benches of this court holding Letters Patent Appeal like the present not maintainable. One such order was passed on 3.5.2011 in LPA No. 138 of 2011 (Sheo Kumar Prasad Singh vs. Upendra Sharma) to which one of us (Shiva Kirti Singh, J.) was a party.

3. The only judgment which remains to be considered is one passed very recently by a Division Bench of this court in the case of Smt. Savitri Sharma Vs. The State of Bihar and Others upon which strong reliance has been placed by learned counsel for the appellant.

4. A perusal of that judgment shows that the case involved allegation of fraud and by referring to the peculiar facts of the case the Division Bench held that the writ petition had to be treated as one under Article 226 of the Constitution of India. Unfortunately, attention of the court was not drawn in that case to the recent Division Bench judgment in the case of Durga Devi vs. Vijay Kumar Poddar (supra) and hence, the relevant law laid down in the case of Durga Devi vs. Vijay Kumar Poddar (supra) was not noticed. The conclusion in Smt. Savitri Sharma's case that the writ petition was in effect one under Article 226 of the Constitution of India, must thus be taken to be of restricted application in the peculiar facts of that case only and cannot be treated as having laid down any proposition of law. In view of legal position settled by the Apex Court and earlier

Division Benches of this court which has been followed consistently in large number of cases, we have no difficulty in holding that in the given facts the writ petition could be filed only under Article 227 of Constitution of India and its labeling u/s (sic--Article?) 226 of Constitution of India is immaterial.

In that view of the matter no Letters Patent Appeal is maintainable in this case. The appeal is, therefore, dismissed as not maintainable.