

(2012) 01 JH CK 0110
In the Jharkhand High Court
Case No : L.P.A. No. 136 of 2011

Syed Mohammad Sharfullah

APPELLANT

Vs

Principal, Delhi Public School, Dhanbad and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100(A)

Citation : (2012) 1 JLJR 214

Hon'ble Judges : Prakash Tatia, J; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties on the question of maintainability of this L.P.A.

2. This L.P.A. is against the order dated 03.03.2011 passed in Appeal Case (S.B.) No.11 of 2010, hence, the respondents have raised objection about the maintainability of this further appeal before the same High Court on the ground that no L.P.A. lies against the order passed by the High Court while exercising appellate jurisdiction. Learned counsel for the respondents have relied upon a judgment of Hon'ble Supreme Court delivered in the case of Geeta Devi and Others Vs. Puran Ram Raigar and Another, . In the said judgment, it has been held that after insertion of Section 100-A, intra Court appeal in a High Court is not maintainable notwithstanding anything in the High Court Rules or Letters Patent to the contrary.

3. Learned-counsel for the appellant submitted that a Division Bench of this Court in L.P.A. No. 141 of 2010 relying upon a judgment in the case of Sachida Nand Lal @ Sachida Nand Shah Vrs. State of Bihar (Now Jharkhand), 2009(1) JCR 120 (SC) held that intra Court appeal is maintainable. Learned counsel for the appellant also relied upon the said judgment of the Hon'ble Supreme Court delivered in the case of Sachida Nand Lal @ Sachida Nand Shah.

4. We have considered the submission of the learned counsel for the parties.

5. Before Hon''ble Supreme Court in the case of Sachida Nand Lal @ Sachida Nand Shah, the appellate decree of the Single Bench was prior to the year 2000 as the Division Bench itself dismissed the L.P.A. on 01.3.2000 whereas the CPC was amended subsequent to that and Section 100-A was inserted which came into force from 1.07.2002. Section 100-A, C.P.C. says that notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

6. Therefore, in view of finding of Hon''ble Supreme Court in the case of Geeta Devi and others, the brief order dated 01.9.2010 passed in L.P.A. No. 141 of 2010 cannot be accepted deciding a question of law and if it has decided a question of law, then it goes contrary to the decision of Hon''ble Supreme Court in the case of Geeta Devi and others and therefore, the brief order dated 01.09.2010 is per incuriam so far as holding that intra Court appeal against any High Court order is maintainable even if it has been preferred against the appellate decree or order.

7. In view of the above reasons, this L.P.A. being L.P.A. against the appellate order is not maintainable and is accordingly dismissed.