

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1377 of 2014

IN

Civil Writ Jurisdiction Case No. 4652 of 2012

=====

Rajendar Mahto, S/o Late Saryug Mahto, resident of village- Bach, P.O.- Gospur,
P.S. Bangra, District- Samastipur

.... Petitioner- Appellant/s

Versus

1. Ramjee Mahto, Son of Late Sitaram Mahto, resident of village- Bach, P.S.
Bangra, District- Samastipur.

Respondent 1st Party.

2. Mamta Devi, W/o Arun Singh, D/o Late Sitaram Mahto, of Village-
Birsinghpur, P.S. Kalyanpur, District- Samastipur.

.... Respondent 2nd Party

=====

Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh, Advocate

For the Respondent/s : None

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 09-09-2015

This Letters Patent Appeal raises a fundamental question and the question is: whether a writ of *certiorari* can be issued by a High Court in exercise of its power under Article 226 of the Constitution of India so as to get set aside a judicial order, which may have been made by a civil court in a proceeding covered by the Code of Civil Procedure, 1908?

The background facts, leading to the question noted above, are set out hereinbelow:

By order, dated 17.01.2012, passed, in Title Suit No.15

of 2009, by the learned Munsif-1st, Samastipur, the defendant No.1/A's prayer, made under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment of the written statement, was rejected.

By filing a writ petition under Article 227 of the Constitution of India, the appellant herein, as writ petitioner, had put to challenge the order, dated 17.01.2012, whereby the application, seeking amendment of the written statement, had been rejected. The writ petition gave rise to CWJC No.4652 of 2012.

By order, dated 17.06.2014, passed by a learned Single Judge, the writ petition has been dismissed.

Aggrieved by the dismissal of his writ petition, the writ petitioner, with the help of this Letters Patent Appeal, is in appeal before us.

We have heard Mr. Shambhu Sharan Singh, learned Counsel, for the appellant.

It is not in dispute before us that against an order passed by a High Court in exercise of its power of superintendence under Article 227 of the Constitution of India, no Letters Patent Appeal lies.

What has, however, been contended, on behalf of the appellant, is that aggrieved by the order, dated 17.01.2012, passed



in Title Suit No.15 of 2009, though the appellant had filed an application stating to be an application under Article 227 of the Constitution of India, the said application was, in fact, a writ petition made under Article 226 of the Constitution of India and ought to be treated as a writ petition made under Article 226 of the Constitution of India and not an application made under Article 227 of the Constitution of India.

It needs to be borne in mind that while exercising power under Article 227 of the Constitution of India, the High Court does not issue a writ of *certiorari*; rather, the High Court examines an order in order to keep the subordinate court within the ambit of law inasmuch as Article 227 of the Constitution of India vests, in the High Court, the power of superintendence in order to keep the subordinate court within the bounds of law. Under Article 227, the order of the court, (civil or criminal court) can be examined in very exceptional circumstances, where failure of justice has occasioned.

The above position of law has been succinctly laid down in **Radhey Shyam and another Versus Chhabi Nath and others, reported in (2015) 5 Supreme court Cases 423**, wherein a three Judge Bench of the Supreme Court has held that judicial order of civil court is not amenable to writ of *certiorari* under Article 226

of the Constitution of India and an order of civil court cannot, therefore, be challenged by taking recourse to, and/or by invoking jurisdiction under, Article 226 of the Constitution of India.

It may be pointed out that in **Radhey Shyam** (Supra), the Supreme Court had doubted the correctness of the law laid down in **Surya Dev Rai Versus Ram Chandra Rai, reported in (2003) 6 SCC 675**, wherein it had been held that an order of civil court was amenable to judicial review under Article 226 of the Constitution of India. The three-Judge Bench has held, at paragraph 29, in **Radhey Shyam** (Supra), that no judicial order of a civil court is amenable to writ jurisdiction under Article 226 of the Constitution of India and, thus, the contrary view taken, in this regard, in **Surya Devi Rai** (supra), is incorrect and, therefore, overruled.

From what has been discussed above, it becomes abundantly clear that an order of a civil court may be put to scrutiny by the High Court in exercise of its power of superintendence under Article 227 of the Constitution of India and against such an order, no writ of *certiorari* can be issued by invoking the High Court's extra-ordinary jurisdiction under Article 226 of the Constitution of India.

We find the submission, made on behalf of the

appellant, not tenable that a judicial order passed in a civil proceeding by a civil court is amenable to High Court's extraordinary jurisdiction under Article 226 of the Constitution of India.

In the case at hand, as the petition was filed, in the High Court, by the defendant, against the order, dated 17.01.2012, passed by the learned Munsif-1st, Samastipur, rejecting thereby the prayer for amendment of the written statement made by the defendant No.1-A, the petition, so filed in the High Court, ought to be treated as having been filed under Article 227 of the Constitution of India and by order, dated 17.06.2014, aforementioned, as a learned single Judge of this Court has already dismissed the petition; no further appeal lies inasmuch as no appeal lies against an order passed in exercise of High Court's power of superintendence under Article 227 of the Constitution of India.

In the result and for the foregoing reasons, this appeal is held to be not maintainable and is, accordingly, dismissed.

However, there shall be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

AFR/Sunil

U			
---	--	--	--