

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1363 of 2014
IN
Miscellaneous Jurisdiction Case No. 2507 of 2010**

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1. Mohammad Ali Son of Md. Abdul Ali Resident of Mohalla-Karimganj, P.S-Civil Lines, District-Gaya.

.... Appellant/s

Versus

1. Md. Quamru Jamma S/o Md. Box, Legal heirs of Bibi Hushna Ara.
2. Md. Abul Quashim S/o Mohammad Bux, Legal heirs of Bibi Hushna Ara.
3. Md. Hashim S/o Mohammad Bux Legal heirs of Bibi Hushna Ara.
4. Md. Yasin S/o Mohammad Bux Legal heirs of Bibi Hushna Ara.
5. Md. Shamim S/o Mohammad Bux Legal heirs of Bibi Hushna Ara.
6. Md. Nasim Bakhsh S/o Mohammad Bux Legal heirs of Bibi Hushna Ara.(All Resident of Mohalla-Karimganj, P.S.-Civil Line, District-Gaya.)
7. Nazma Alam Wife of Late Mohammad Alam R/o Karimganj, Road No.-2, Bakhsmi Manzil, P.S.-Civil Lines, District-Gaya.
8. Sobra Khatoon W/o Md. Wabaluddin R/o Makhдум Rashli Nagar, Phulwari P.S.-Phulwarisharif, District-Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gyan Prakash Ojha

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 09-09-2015

At the root of this Letters Patent Appeal lies the controversy as to whether an appeal is maintainable against an order passed by a single Judge of this Court directing restoration of an appeal subject to payment of cost?

The controversy has arisen in the backdrop of the facts as set out hereinbelow:

Pursuant to the judgment, dated 05.07.1985, passed,



in Title Suit No. 25 of 1984/18 of 1983, by the learned 4th Additional Sub Judge, Gaya, a decree was drawn on 12.08.1985. Aggrieved by the decree, dated 12.08.1985, an appeal was preferred, which gave rise to First Appeal No. 538 of 1985. The appeal was admitted on 24.09.1996 and, while directing issuance of notices, the proceeding of Execution Case No. 04 of 1995, which had been instituted for execution of the degree, dated 12.08.1985, aforementioned, was stayed. On 13.11.1995, when the appeal came up for hearing, since none had appeared on behalf of the appellant, the appeal was dismissed for default.

By making an application, which gave rise to MJC No. 2507 of 2010, the appellant sought for restoration of his appeal on the ground that the office of the Counsel for the appellant could not mark the case in the relevant cause list and, thus, the Counsel for the appellant was under the impression that the appeal was still pending and, in the meanwhile, the sole respondent died on 05.08.1997, but treating the appeal as still pending, a petition, seeking substitution of the legal representatives of the sole respondent, was filed on 16.10.1997, and, in the meantime, the appellant, too, died on 19.04.2010 and when the inspection of the case record was carried out, it came to light that the appeal had been dismissed for default and, thereafter, the restoration

application aforementioned was filed, on 28.06.2010, seeking restoration of appeal.

Having heard the learned Counsel for the parties concerned, a learned single Judge of this Court passed an order, on 30.04.2014, allowing the application seeking restoration of the appeal subject to, however, payment of Rs. 7,000/-, as cost.

Aggrieved by the order, dated 30.04.2014, aforementioned, restoring the appeal, the respondents, in First Appeal No. 538 of 1938, have filed this Letters Patent Appeal seeking that the order, dated 30.04.2014, whereby the First Appeal had been restored, be set aside.

We have heard Mr. Gyan Prakash Ojha, learned Counsel, appearing on behalf of the appellant.

While considering the present appeal, it may be pointed out that before coming into force of the Code of Civil Procedure (Amendment) Act, 2002, Section 100-A read, "**No further appeal in certain cases** – Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, **where any appeal from an appellate decree or order is heard and decided by a Single Judge of the High Court, no further appeal shall lie from the judgment, decision or order of such Single**

Judge in such appeal or from any decree passed in such appeal". (Emphasis is added)

Section 100-A, upon its amendment, with effect from 01.07.2002, reads as follows:

"No further appeal in certain cases – 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 the High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

(Emphasis is supplied)

From a bare reading of the provisions, embodied in Section 100-A, as the same stood before its amendment, made by the Code of Civil Procedure (Amendment) Act, 2002, it becomes clear that according to unamended Section 100-A, no further appeal was maintainable from an order made by a single Judge of a High Court in any appeal arising out of an *appellate decree or order*; whereas under the amended Section 100-A (as the same stands with effect from 01.07.2002), *no appeal from an original or appellate decree or order, if heard and decided by a single Judge of a High Court, would lie even if*

there is any provisions to the contrary in any Letter Patent of any High Court.

In the light of what have been pointed out above, it is apparent that as the order, dated 30.04.2014, was passed by a learned single Judge of this Court in an appeal against an original order, no further appeal is maintainable inasmuch as Section 100-A makes it clear, on its amendment by Code of Civil Procedure (Amendment) Act, 2002, that no further appeal from an original or appellate order lies under the amended Section 100-A, even though the Letters Patent of a High Court makes such an appeal maintainable.

In view of the above, this appeal is dismissed as not being maintainable.

However, there shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

AFR/
Prabhakar
Anand/-

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