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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 135/2015

ARUN MAINI

..... Appellant

Through: Mr. Alok K. Aggarwal, Adv.

Versus

BHARAT PETROLEUM CORPORATION LTD. Respondent

Through: Mr. Anil K. Batra, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.03.2015

CM No.4164/2015 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

LPA No.135/2015 & CM No.4163/2015 (for stay)

1. This intra court appeal impugns the order dated 17th October, 2014 of the learned Single Judge of this Court of dismissal of CM(M) No.664/2011 (under Article 227 of the Constitution of India) preferred by the appellant. The appeal is listed subject to office objections, as to the very maintainability of the LPA and if found maintainable, as to the same being barred by limitation.

2. The counsel for the appellant has sought to get over the said objections by contending that against the impugned order dated 17th October, 2014, the appellant had preferred SLP(C) No.32456/2014 and has

filed this appeal, as directed by the Supreme Court on 5th December, 2014. It is contended that thus the appeal has to be necessarily entertained and has to be treated as within time.

3. It is settled position in law that against an order of a Single Judge, in exercise of jurisdiction under Article 227 of the Constitution of India, no Letters Patent Appeal (LPA) is maintainable. Reference in this regard can be made to the judgment of Division Benches of this Court in (i) Municipal Corporation of *Delhi Vs. Tyagi Anani & Company (P) Ltd.* MANU/DE/0130/1971; (ii) *Delhi Sainik Co-operative House Building Society Ltd. Vs. Financial Commissioner* AIR 1983 Delhi 81; and, (iii) *Dolly Kapoor Vs. Sher Singh Yadav* MANU/DE/1085/2012 and to the judgment of the Supreme Court in, (iv) *Ashok K. Jha Vs. Garden Silk Mills* (2009) 10 SCC 584; and, (v) *Umaji Keshav Meshram Vs. Radhikabai* 1986 (Supp.) SCC 401. It may also be mentioned that the said petition under Article 227 of the Constitution of India was filed with respect to an order dated 21st September, 2010 of the Additional District Judge, Delhi, of dismissal of an application filed by the appellant under Order XXXVII Rule 4 of the Civil Procedure Code, 1908, for setting aside of a money decree against the appellant.

4. Qua the contention of the appellant, of the appeal having been directed to be filed by the Supreme Court, we may reproduce herein below the order dated 5th December, 2014 of the Supreme Court in the SLP preferred by the appellant. The same is as under:

“UPON hearing the counsel the Court made the following
O R D E R.

Learned counsel for the petitioner seeks permission to withdraw the special leave petition with liberty to move the High Court for filing a LPA. Liberty, as prayed for, is granted. The special leave petition is dismissed as withdrawn.”

It would thus be evident that it was the appellant who, instead of pressing the SLP on merits, sought permission from the Supreme Court to withdraw the same with liberty to file an LPA before this Court. Though undoubtedly the Supreme Court gave the liberty as sought by the appellant but without going into the question (and which the Supreme Court was not required to go into) whether an LPA does in fact lie. The appellant himself is to blame for making such a statement before the Supreme Court and cannot make an appeal which otherwise is not maintainable, maintainable by doing so.

5. We therefore dismiss this LPA as not maintainable.

No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MARCH 09, 2015
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