

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1078 of 2016**

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The State Of Bihar & Ors

Versus

M/s Bambam Construction

.... .... Appellant/s

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Prabhat Ranjan Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO  
ORAL ORDER**

2 28-09-2016 Heard learned Additional Advocate General-15

appearing on behalf of the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the State and state authorities praying for quashing the entire proceeding along with order dated 06.08.2016 passed in Execution Case No. 07 of 2015.

3. From perusal of the order dated 06.08.2016, it appears that the order is only to the effect that both the parties have filed *hazari*. Advocate did not work on the said date. The case was posted for 23.09.2016. Therefore, this order is a routine order. By the order, none of the parties are prejudiced. So far quashing of the entire proceeding under Article 227 of the Constitution of India is concerned, it may be mentioned here that in the case of *Shalini Shyam Shetty & Anr vs Rajendra Shankar Patil* reported in *2010 (8) SCC 329*, the Hon'ble Supreme Court



has held that a proceeding under Article 227 of the Constitution of India can never be governed under the original side rules of the High court. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex-debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right.

4. Again the Hon'ble Supreme Court in the case of *Radhey Shaym & Anr. Vs. Chhabi Nath & Ors.* reported in **2015 (5) SCC 423** has held that all courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. Despite the curtailment of revisional jurisdiction under Section 115 C.P.C., jurisdiction of the High Court under Article 227 remains unaffected and has not resulted in expanding the High Courts powers of superintendence.

5. In view of these settled principles of law, the orders

against which neither appeal is maintainable nor revision is maintainable cannot be examined in exercise of jurisdiction under Article 227 of the Constitution of India. Since by amendment of Code of Civil Procedure, civil revision is barred, therefore, the legality or other of the order passed by the court below can be subjected to the test under Article 227 of the Constitution of India but because the civil revision is barred, the application under Article 227 for quashing the entire proceeding is not maintainable as the Supreme Court has held that because of the curtailment of revisional power, the jurisdiction of the High Courts' powers has not been expanded. In simple language, it can be said that if prior to curtailment of the power of the High Court, no civil revision was maintainable for quashing the entire proceeding then how, this superintendence power under Article 227 can be exercised by the High Court for quashing the entire proceeding after amendment of C.P.C. Prior to amendment also, application for quashing the entire proceeding was not maintainable. In my opinion, therefore, in this civil miscellaneous application, the relief, as prayed for, cannot be granted. Accordingly, this civil miscellaneous application is dismissed.

brajesh/-

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**(Mungeshwar Sahoo, J)**