

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.361 of 2016
IN
Civil Writ Jurisdiction Case No. 6814 of 2011

- =====
1. Shameeda Khatoon Widow of Late Fakhruddin
 2. Md. Jawed, S/o Late Fakhruddin
 3. Md. Parvez, S/o Late Fakhruddin.
 4. Rounaque, D/o Late Fakhruddin.
 5. Md. Rasid.
 6. Md. Khalid Both Son of Late Fakhruddin.
 7. Rani Khatoon.
 8. Sabnam Khatoon, Both D/o Late Fakhruddin.

All Resident of Mohalla- Sha Jalalpir, P.O- Sasaram, P.S.- Sasaram (Town), District- Rohtas, at present Residing at Mohalla- Dargah Road, Post- Mahendru, P.S.- Sultanganj, District- Patna.

.... Appellants

Versus

1. Gulam Sabir, S/o Late Md. Khalil, Resident of Mohalla- Sha Jalalpir, P.O- Sasaram, P.S.- Sasaram, (Town), District- Rohtas.
2. Shamsun Nisa, Widow of Late Shakil Ahmad Resident of Mohalla- Sha Jalalpir, P.O- Sasaram, P.S.- Sasaram (Town), District- Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Prabhakar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

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

Date: 28-04-2016

Against the order, dated 18.02.2011, passed by the learned Sub-Judge-VI, Sasaram, in Title Suit No. 49 of 2004, whereby the learned trial Court had rejected the plaintiff's petition, dated 24.01.2011, whereby the plaintiff had sought for rejection of the fresh written statement filed by the substituted defendants, the present appellants filed a petition, under Article 227 of the Constitution of India, seeking to get the order, dated 18.02.2011, set aside and quashed, which gave rise to C.W.J.C.

No. 6814 of 2011.

2. By the order, dated 05.07.2013, a learned single Judge of this Court allowed the petition made under Article 227 of the Constitution of India and set aside the order, dated 18.02.2011 aforementioned. By the order, dated 05.07.2013, aforementioned, the learned single Judge also rejected the written statement, which had been filed by the substituted/implied defendants, who were respondents in the petition made under Article 227 of the Constitution of India.

3. Aggrieved by the order, dated 05.07.2013, aforementioned, this Letters Patent Appeal has been preferred under Clause 10 of the Letters Patent of the Patna High Court Rules.

4. This appeal raises a vital issue, which we have dealt with earlier also. The question is : whether an *intra* Court appeal lies under Clause 10 of the Letters Patent of the Patna High Court Rules against an order made under Article 227 of the Constitution of India?

5. The question, posed above, takes us to the historical background of under Article 227 of the Constitution of India. It is not in dispute that the historical ancestry of Article 227 of the Constitution of India can be traced to Section 107 of the Government of India Act, 1915.

6. Sections 107 and 108 of the Government of India Act, 1915, being relevant, are reproduced below :

"107. Powers of High Courts with

respect to subordinate courts.— Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(a) call for returns;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General-in-Council, and in other cases of the local government.

108. Exercise of jurisdiction by single judges or division courts.— (1) Each High Court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the High Court, of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each High Court

shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice, are to constitute the several division courts."

7. From a minute reading of the provisions embodied in Section 107 of the Government of India Act, 1915, what becomes transparent is that the High Court was given the power of *superintendence* over all the Courts subject to its appellate jurisdiction and in exercise of this power of *superintendence*, the High Court could *call for returns; direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction; make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:*

8. While considering Section 107 of the Government of India Act, 1915, it needs to be borne in mind that prior to coming into force of the Government of India Act, Section 15 of the Indian High Courts Act, 1861, conferred upon each of the Chartered High Courts the power of *superintendence* over all courts subject to its appellate jurisdiction. As the High Courts, other than the three Chartered High Courts, did not have the power of *superintendence* over all the Courts subject to its respective appellate jurisdiction, Section 107 of the Government of India Act, 1915, conferred on every High Court

similar power of *superintendence*, which had been conferred on the Chartered High Courts by Section 15 of the Indian High Courts Act, 1861.

9. We may, however, hasten to point out that Government of India Act, 1915, underwent an amendment by the Government of India (Amendment) Act, 1916, and, then, by the Government of India Act, 1919, which, eventually, came to be replaced by the Government of India Act, 1935, and Section 224 of the Government of India Act, 1935, vested limited power of *superintendence* on the subordinate Courts by the High Court.

10. It is of immense importance to note that it was Section 224 of the Government of India Act, 1935, which incorporated, in substance, the provisions of Section 107 of the Government of India Act, 1915. Section 224 of the Government of India Act, 1935, being relevant, is reproduced below:

"224. (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say. –

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

11. From a careful reading of Section 224 of the Government of India Act, 1935, *vis-a-vis* Section 107 of the Government of India Act, 1915, what can be safely gathered is that the High Court's power of *superintendence*, subject to the appellate jurisdiction of the High Court, was continued under the Government of India Act, 1935. By sub-Section (2) of Section 224 of the Government of India Act, 1935, the High Court's power of *superintendence* was restricted inasmuch as this power of *superintendence* did not exceed to the extent of questioning any judgment of any inferior Court, which was not otherwise subject to appeal or revision. This restriction — imposed on the High Court that it cannot have power of *superintendence* on the judgment of any inferior Court, which is not otherwise subject to appeal or revision of the High Court — has been done away with, while making Article 227 of the

Constitution of India.

12. In substance, the power of *superintendence* introduced by the Government of India Act, 1915, was continued till the Government of India Act, 1935, remained in force and it was thereafter that Article 227 of the Constitution of India confers on the High Court the power of *superintendence* over all the Courts and Tribunals subject to the territorial jurisdiction of the High Court. This constitutional aspect would become clearer as we proceed further.

13. Under Section 113 of the Government of India Act, 1915, the Crown, by Letters Patent, could establish a High Court of Judicature in any territory in British India and it was pursuant to the power conferred by Section 113 of the Government of India Act, 1915, that the Crown established High Court of Judicature, at Patna, by Letters Patent, on February 9, 1916.

14. We may, at this stage, pause and take note of what Article 227 of the Constitution of India conveys. For this purpose, Article 227 is reproduced below :

"227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces"

15. A careful reading of Article 227 of the Constitution of India clearly shows that Article 227 of the Constitution of India vests in the High Courts the power of *superintendence*. However, while Section 107 of the Government of India Act vested, in the High Courts, the power of *superintendence* over all the 'Courts' subject to its appellate jurisdiction, Article 227 of the Constitution of India has vested, in the High Courts, the power of *superintendence* not only over the *Courts*, which are subject to its territorial jurisdiction,

but also over all the Tribunals in relation to which the High Court exercises territorial jurisdiction.

16. Bearing in mind the fact that Section 107 of the Government of India Act had conferred power of *superintendence* over all the *Courts* subordinate to the High Court's appellate jurisdiction and such a power of *superintendence* is also available with the High Courts, under the Constitution of India, over not only all the *Courts*, but *Tribunals* too subordinate to the High Court's territorial Jurisdiction, we may pause, to take note of Clause 10 of the Letters Patent of the Patna High Court, which reads as follows:

“10. Appeal to the High Court from Judges of the Court. –

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the Judgment (not being a Judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of Appellate Jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of Revisional Jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction of one Judge of the said High



Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court. Pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty-nine, in the exercise of Appellate Jurisdiction in respect of a decree or order made in the exercise of Appellate Jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.”

17. When broken into different components, what emerges is that under Clause 10 of the Letters Patent of Patna High Court, an appeal lies to the High Court of Judicature at Patna,

- (1) from a judgment
- (2) of one Judge of the High Court

(3) pursuant to Section 108 of the Government of India Act, 1915

(4) not being—

(a) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the *superintendence* of the High Court,

(b) an order made in the exercise of revisional jurisdiction,

(c) a sentence or order passed or made in exercise of the power of *superintendence* under the provisions of Section 107 of the Government of India Act, 1915, or

(d) a sentence or order passed or made in the exercise of criminal jurisdiction.

18. From a close reading of Clause 10 of the Letters Patent of this High Court, it becomes abundantly clear that from an order of a single Judge of this High Court, no *intra*-Court appeal could lie if the order is passed or made in exercise of power of *superintendence* conferred by Section 107 of the Government of India Act, 1915.

19. Since an order, passed by a single Judge of this Court, in exercise of power of *superintendence* under Section 107 of the Government of India Act, 1915, was not an appealable order, under Clause 10 of the Letters Patent of the Patna High Court, it logically follows that an order, now, passed or made by a single Judge of this Court, in exercise of

this Court's power of *superintendence* over the subordinate Courts and Tribunals, under Article 227 of the Constitution of India, would also not be an appealable under Clause 10 of the Letters Patent of this High Court.

20. With regard to the power of *superintendence* of the High Court's under Article 227, it was contended, in ***Waryam Singh v. Amarnath***, reported in, **1954 SCR 565 : AIR 1954 SC 215**, that a High Court can exercise power of only *administrative superintendence* on the Courts and Tribunals subordinate to it, but not the power of judicial *superintendence*.

21. Disagreeing with the contention that Article 227 of the Constitution of India confers on the High Courts only power of *administrative superintendence*, the Supreme Court pointed out, in ***Waryam Singh*** (Supra), that in ***Waryam Singh*** (supra) that the material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of *superintendence* has been extended by Article 227 to, apart from Courts, to *tribunals* too and that this power of *superintendence* not only includes *administrative superintendence*, but also *judicial superintendence*. The relevant observations, appearing in this regard, in ***Waryam Singh*** (supra), read as under:

"The material part of Article 227 substantially reproduces the



provisions of Section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to tribunals. The only question raised is as to the nature of the power of superintendence conferred by the article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that Section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as Section 224. Section 224 of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify



*the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227. **This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915.***

(Emphasis is supplied)

22. In the light of the decision in **Waryam Singh** (supra), what clearly follows is that material part of Article 227 of the Constitution of India substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of *superintendence* has been extended to the Tribunals as well, though not to any court or tribunal constituted by or under any law relating to the Armed Forces. This apart, the power of *superintendence* of the High Court under Article 227 of the Constitution of India is both, administrative as well as judicial. Under Clause 10 of the Letters Patent of Patna High Court, no *intra-Court* appeal lied against an order passed or made in the exercise of the power of *superintendence* under the provisions of Section 107 of the

Government of India Act nor can an *intra*-Court appeal lies against an order made under Article 227 of the Constitution of India (which substantially reproduces Section 107 of the Government of India Act).

23. The Supreme Court has also pointed out, in ***Umaji Keshao Meshram*** (supra), that when a Single Judge of a Chartered High Court decides a petition under Articles 226 or 227, his judgment is one given pursuant to Article 225 of the Constitution and is appealable under Clause 15 of the Letters Patent unless it falls within one of the excluded categories and further held that an *intra*-Court appeal does not lie against the judgment of a Single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court. We may point out that Clause 15 of the Letters Patent of Bombay High Court is *pari material* Clause 10 of the Letters Patent of the Patna High Court.

24. Situated thus, it becomes abundantly clear that the expression, "*order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act*" has to be read as "*order passed or made in the exercise of the power of superintendence under the provisions of Article 227 of the Constitution*" and if so read, it becomes clear that an *intra*-Court appeal does not lie against the order of a single Judge

passed or made under Article 227 of the Constitution of India such an appeal having been barred by Clause 10 of the Letters Patent of Patna High Court. [see **Umaji Keshao Meshram** (supra)].

25. Because of what has been discussed and pointed out above, this appeal is held to be no maintainable and is dismissed accordingly.

26. There shall, however, be not order as to costs.

(I. A. Ansari, ACJ)

Samarendra Pratap Singh, J : I agree.

(Samarendra Pratap Singh, J)

Pawan/-

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