

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.46 of 2013

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Md. Akhtar Khan & Ors.

.... Appellant/s

Versus

Kedar Nath Fatehpuria Liquidator Ara Sasaram Light Railway Limited &
Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar, Advocate

Mr. Satish Kumar, Advocate

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

18 08-09-2016

I.A. No. 2660 of 2015.

The instant I.A. has been filed under section 151 of the C.P.C. on behalf of respondent no.1 praying therein to dismiss the appeal because the same is not maintainable for want of jurisdiction. The copy of the petition has been served to the other side but no counter affidavit or reply has been filed on behalf of the appellants.

Heard both the learned counsels and perused the record.

This appeal has been filed against the order dated 10.10.2012 passed by the Sub. Judge-1st, Bhojpur, Arrah in Title Suit No. 483 of 2011. The said suit was filed by the plaintiffs-appellants against the Official Liquidator, Arrah-Sasaram Light Railway for declaration of right, title and interest over the suit land



of the plaint and other reliefs. The land of the railway along with other land in the then Shahabad District was acquired at the cost of the Arrah-Sasaram Light Railway (hereinafter referred to as the Company) for running small gauge train between Arrah-Sasaram. The Company is the rightful owner of the land and the Company is under voluntary liquidation and Mr. Kedarnath Fatehpuria is appointed as Liquidator for the Company and the liquidation proceeding of the Company is going on under the supervisory control of the Calcutta High Court. Earlier also the District Board of Rohtas and Bhojpur led their monetary claims by way of instituting Title Suit No. 164 of 1978 before the court of the Sub. Judge, Sasaram and Title Suit No. 51 of 1982 before the Sub. Judge-1st, Arrah which stood transferred to the Calcutta High Court under the provisions of the Companies Act vide order passed by the Calcutta High Court in Company Application No. 82 of 1979 which is evident from bare perusal of the institution register of Title Suit No. 51 of 1982.

This Court has also directed the State of Bihar to relegate its grievances with respect to the Company before the Calcutta High Court vide order dated 21.05.2010 passed in C.W.J.C. No. 9790 of 2008. The plaintiffs have no right, title and interest over the land but it is a fact that the instant title suit has



been instituted by the plaintiffs which is of civil nature and the provision contained in section 446 of the Companies Act, 1956 expressly impose a bar upon cognizance of any suit or proceeding by any court/ tribunal with respect to a Company with respect to which either winding up order has been passed or an Official Liquidator has been appointed.

In the present case the Arrah-Sasaram Light Railway is the Company under liquidation and the liquidation proceeding is under supervisory control of the Calcutta High Court. The Official Liquidator has already been appointed and the present Title Suit was instituted without taking leave of the Hon'ble Calcutta High Court and therefore without taking leave/permission of the Calcutta High Court the suit cannot proceed. The Division Bench of this Court in L.P.A. No. 683 of 2011 has also stated likewise vide Annexures- 5 series.

On behalf of the appellants it is fairly submitted that the suit was filed without taking leave of the Calcutta High Court and as such the suit/appeal is not maintainable.

Under the circumstances, it is held that the instant appeal is not maintainable for want of jurisdiction as no permission/ leave was taken from the Company Court/ Calcutta High Court.

Accordingly, the instant I.A. stands disposed of and
this First Appeal fails as not maintainable.

(Jitendra Mohan Sharma, J)

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