

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.745 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 13017 of 2012
Along with
Interlocutory Application No.3131 of 2015

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Ajeet Kumar @ Ajit Kumar, S/o Sri Kameshwar Thakur, resident of Village - Repura, P.O.- Mahamadpur Susta, P.S.- Sakra, District - Muzaffarpur.

.... Petitioner-Appellant/s

Versus

Swarn Lata @ Guddan, D/o Arun Thakur, W/o Ajeet Kumar, Resident of Village - Repura, P.O.- Mahamadpur Susta, P.S.- Sakra, District - Muzaffarpur, presently residing at Village - Ratanpura, P.O.- Ratanpura, P.S.- Kamtaul, District - Darbhanga.

.... Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Diwakar Prasad Karn, Advocate
Mr. Chandra Shekhar Anand, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 05-08-2016

Re.: Interlocutory Application No.3131 of 2015

The application is for condonation of delay of 7 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.745 of 2015



The order dated 12th of November, 2014 passed in CWJC No.13017 of 2012 by a learned Single Bench of this Court is subject matter of challenge in the present Letters Patent Appeal whereby, challenge to an order dated 22nd May, 2012 passed in Matrimonial Case No.134 of 2009 by the Principal Judge, Family Court, Muzaffarpur allowing an application filed by the respondent under Section 24 of the Hindu Marriage Act directing the appellant to pay Rs.5000/ per month as interim maintenance till disposal of the case and also pay a sum of Rs.2000/- towards expenses of the proceeding remained unsuccessful.

2. The said order was passed in a petition under Article 227 of the Constitution of India. Since the impugned order was passed in Matrimonial Case No.134 of 2009 under Section 24 of the Hindu Marriage Act by the Principal Judge, Family Court, Muzaffarpur, therefore such order cannot be challenged in intra court appeal.

3. The Hon'ble Supreme Court in the case of Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. reported as (2015) 9 SCC 1 has held that an order passed by the learned Single Judge in a proceeding arising out of an order passed by the Civil Court is not amenable to intra court appeal against an order passed under Article 227 of the Constitution of India. It was held to the following

effect:-

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam; (2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.”

4. In view of such order, we find that the present Letters Patent Appeal is not maintainable and is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
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