

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 348 of 2016**

- Smt. Usha Sharma W/o Kailash Sharma, Aged About 52 Years R/o
HIG-1/1093, Chhattisgarh Housing Board, Industrial Area, Bhilai,
District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through: The Collector, Durg, District Durg,
(Chhattisgarh)
2. Ram Jharokha, S/o Bije Ram Yadav, Aged About 42 Years R/o Village
Mohrenga, Tahsil Dhamdha, District Durg, (Chhattisgarh)
3. Sobha Ram Parganiha, S/o Rupram Parganiha, R/o Village Mohrenga,
Tahsil Dhamdha, District Durg, (Chhattisgarh)
4. Daya Shankar Parganiha, S/o Sobha Ram Parganiha, Aged About 54
Years R/o Vivekanand Marg, Motipara, Durg, District Durg,
(Chhattisgarh)
5. Smt. Sunita Garg, W/o Satish Garg, Aged About 50 Years R/o Village
Lalpur, Sahaspur, Tahsil Saja, District Durg, (Chhattisgarh)

---- Respondent

For Petitioner

Shri Praveen Dhurandhar, Advocate

For Respondent-State

Shri P. K. Bhaduri, GA

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/06/2016**

1. The petitioner has assailed the legality and validity of the
judgment and decree dated 28.10.2015 passed by the 7th Civil
Judge, Class-II, Durg in Civil Suit No.132-A/2013.
2. In the matter of **Sadhana Lodh Vs. National Insurance Co.**

Ltd. And Another {(2003) 3 SCC 524}, the Supreme Court has held that the right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution and that where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. The Supreme Court held in paras-7 & 8 thus:-

“7.The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct error of law in the decision.

8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.”

3. In the present case also, challenge is to the legality and validity of the judgment and decree passed by the 7th Civil Judge, Class-2, Durg. The order is appealable before the District Judge/

Additional District Judge under Section 96 of the CPC.
Therefore, the present petition under Article 227 of the
Constitution is not maintainable.

4. Accordingly, the Writ Petition is dismissed. However, liberty is reserved in favour of the petitioner to take appropriate measure as available to her in law for challenging the impugned judgment and decree.
5. Certified copy of the judgment and decree be returned to the petitioner on supplying xerox copy thereof.

Sd/-
Judge
(Prashant Kumar Mishra)

Nirala/Barve