

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1554 of 2017

Arising out of

Civil Writ Jurisdiction Case No.7838 of 2015

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Ozair Ahmad Khan @ Ojair Ahmad Khan, son of Akhyaaid Hussain Khan,
resident of Village-Paili, P.O. Bhadeya, P.S.-Barachatti, District-Gaya,
presently residing at Mohalla-Aliganj, P.S. Chandauti, District-Gaya.

... .. Petitioner-Appellant/s

Versus

1. The Sunni Waqf Board, through its Chief Executive Officer, Haj Bhawan,
34, Ali Imam Patha, Patna.
2. The Chief Executive Officer, Bihar Sunni Waqf Board, Haj Bhawan, Ali
Imam Patna, Patna.
3. Md. Asif Khan @ Khurram Khan, son of late Abdul Jabar Khan,
Mutawallai, Irshad Ali Khan, Waqf Estate No.94, Gaya, Resident of Village-
Karma, P.S.-Barachatti, District-Gaya.

Defendant Nos.1, 2, 3/ Respondent 1st Set.

4. Anup Kumar Gupta, son of late Sonu Lal, Shop No.17 (in the name and
style of Sonu Lal and sons) Pharma Market G.B. Road, P.S. Civil Lines,
resident of Sri Makhlautganj, P.S. Kotwali, District-Gaya.
5. Md. Mansoor Alam, son of Late Md. Siddique Ansari, Shop No.15 (in the
name and Style of M/s Electronic), Plaza Market, G.B.Road, P.S. Civil Lines,
District-Gaya, resident of Mohalla Old Karimzang, Gali No.9, P.S. Civil Line,
District-Gaya.

Plaintiffs/respondents 2nd Set.

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Appearance :

For the Appellant/s	:	Mr. Syed Arshad Alam, Advocate Mrs. Anjum Perveen, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-11-2017

Learned counsel for the appellant submits that he shall
remove the defect(s) during the course of the day. He may do so.

Having heard learned counsel for the parties, we find that this
appeal under Clause 10 of the Letters Patent has been filed



challenging an order dated 06.10.2017 passed by the learned Writ Court in CWJC No.12357 of 2017, CWJC No.10579 of 2017 and CWJC No.7838 of 2015. However, the grievance of the appellant before us in this appeal is with regard to the order passed by the learned Writ Court in CWJC No.7838 of 2015.

It is pointed out that the suit before the Tribunal was not at all maintainable and the prayer in the writ petition was to quash an order dated 13.03.2015 passed by the Waqf Tribunal, Patna in T.S. No.10 of 2014 whereby an objection filed by the petitioner-appellant under Order 7 rule 11 (D) of CPC with regard to maintainability of the suit has been rejected.

It is argued by learned counsel that in view of the provisions of Section 89 of the Waqf Act, the suit was not maintainable before the Waqf Tribunal without notice to the Board and this aspect of the matter has been completely overlooked while rejecting the application under Order 7 Rule 11 (D) of the CPC.

However, on going through the impugned order passed by the learned Writ Court, we find that this issue has not been addressed by the learned Writ Court and it is a case where question canvassed before us has not been taken note of by the learned Writ Court even though learned Writ Court does say in his order that the petitioner has challenged the order dated 13.03.2015 whereby the



objection of the petitioner under Order 7 rule 11 (D) of the CPC has been rejected.

That being so, it is a case where the question canvassed before us has not been adverted and considered by the learned Writ Court. Therefore, we grant liberty to the appellant to file an application for review seeking recall of the order passed in CWJC No.7838 of 2015 so far as it pertains to non-consideration of the aforesaid objection raised by the appellant.

With the aforesaid liberty to the appellant to file an application for review before the learned Writ Court, we dispose of the matter.

The appellant, if advised, may seek stay of the proceeding before the Tribunal by filing an appropriate application in the review application.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2017
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