

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1583 of 2014

IN

Civil Writ Jurisdiction Case No. 18987 of 2012

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Deepak Kumar son of Late Bakin Chandra Sinha resident of Mohalla - Shastri Nagar, P.S. Rampur, District - Gaya

.... Appellant/s

Versus

1. Dipali Kumari @ Kumari Dipali wife of Sri Anil Kumar, daughter of Late Rajan Kumari and Late Bankim Chandra Sinha resident of Mohalla - New Sabajpura, infront BMP - 19 - 801505, P.S. Phulwarisharif, District - Patna
2. Kumari Ratna wife of Sri Pankaj Kumar, daughter of Late Rajan Kumari and Late Bankim Chandra Sinha resident of Diwan Mohalla - Khangargate, P.S. Khagekalan, District - Patna - 8
3. Swarnlata Kumari wife of Alok Kumar, Daughter of Late Rajan Kumari and Late Bankim Chandra Sinha resident of Saketpuri, Bihar (Behind Beuar Jail), P.S. Phulwarisharif, District - Patna
4. The State of Bihar through Principal Secretary, Human Resources Department, Patna
5. The Director, Primary Education, Bihar, Patna
6. The Director, Primary Education, (Pariyojna), Bihar, Patna
7. The District Magistrate, Gaya
8. The District Education Officer, Gaya
9. The District Programme Officer (Establishment), Gaya
10. The Head - Master, Mahavir officer, Primary School Central Jail, Gaya Nagar Nigam South Gaya
11. District Provident Fund officer, Gaya
12. Accountant General, Bihar, Patna
13. Minakshi W/o Dhruv Prasad Sinha Resident of Mohalla - Khawaja Gali, Chand Chaura, P.S. Kotwali, District - Gaya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akashdeep

For the State : Mr. Shailesh Kumar, AC to GP 5

For the Accountant General : Mr. Raghwanand

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-08-2017

Seeking exception to an order dated 3rd September, 2014



passed by the learned Writ Court in CWJC No. 18987 of 2012 this appeal has been preferred under Clause 10 of the Letters Patent.

The appellant herein and respondent nos. 10 and 11 in the writ petition are related to each other and respondent no.11 is the brother of the three petitioners and with regard to inheriting the post-retiral and service benefit after death of their mother the dispute came to this Court in the form of a writ petition. When the writ petition was being heard, it seems that the parties were directed to negotiate the issue and settle the matter and it seems that the learned Senior Counsel accepted the position given by the learned Writ Court and when the matter was listed on 03.09.2014. It was accepted by all concerned that the parties agreed by permitting the appellant –Deepak Kumar to file a joint petition before the District Programme Officer (Establishment), Gaya, who will authorize payment in favour of all the five siblings in equal share. Based on the agreement entered into the writ petition was disposed of in the following terms:-

“Obviously, there were differences of opinion, which led to filing of the writ petition seeking direction upon the respondents that the rightful claim of all the petitioners including respondent no. 11 and their interest must be taken into consideration in disbursement of money under the head of gratuity, GPF since payment has already been made to the brother under GSS and leave encashment.



To avoid any further complication and litigations, counsel representing respondent no. 10 agrees to file a joint petition before the District Programme Officer (Establishment), Gaya, who will authorize payment in favour of all the five siblings in equal share.

In view of the above, the disputes between the parties have been sorted out and the District Programme Officer (Establishment) is directed to process left over claims and for payment as indicated above.

It is hoped and expected that no sooner a joint application is filed by all the five progenies, the matter will be given due priority and authorization for payment issued without further delay on this count.

Writ application is disposed of in terms of above direction.”

Now the appellant herein-respondent no.10 in the writ application says that the Senior Counsel acted without any instructions from him. He does not accept the settlement and it is his contention that he has not agreed for the settlement and, therefore, wants to recall of the order and hearing of the writ petition again.

Learned counsel for the appellant having placed reliance on the following judgments argued that a settlement contrary to law is not permissible and, therefore, appeal should be allowed:-

**(a) Union of India vs. S C Parashar
2006(2) PLJR (SC) 200**

**(b) Union of India vs. Mohanlal Likumal Punjabi
(2004) 3 SCC 628**



**(c) Central Council for Research in Ayurveda &
Siddha vs. Dr. K Santhakumari
(2001) 5 SCC 60**

On the contrary, learned counsel for the respondents has argued that with a view to amicably resolve the dispute pertaining to inheritance of the benefits accruing to the mother after her death, the matter was resolved with consent of everyone, and merely because the appellant says that he had not consented, no case for interference is made out.

We have heard learned counsel for the parties at length and are not inclined to interfere into the matter. The legal question canvassed by the appellant can be considered only if it is a case of the counsel for the appellant had acted beyond the instructions given to him and thereby committed misconduct for which he has taken action against the counsel. There is nothing available on record to show that the appellant has ever made any complaint against the counsel, but for merely indicating that he is not a party to the settlement. On the contrary, the records indicate that the matter was adjourned from time to time and orders passed by the learned Writ Court goes to show that the Court has opined that it is glad to record that finally the sense has prevailed upon the brother who is duly represented through Senior Counsel and the settlement was recorded.

A perusal of the proceeding in the writ petition shows



that the matter was taken up for settlement at various levels even in the Lok Adalat which have taken, and all this indicates that the matter has been settled amicably and, therefore, now with regard to distribution of share we are not inclined to interfere into the matter. The contention that settlement in contrary to law need not be looked into in the facts of this case.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

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