

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13881 of 2006

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1. Binod Prasad Singh, Son of Late Shiv Balak Prasad Singh, Advocate, Civil Court, Motihari, resident of Mohalla Kalah Nagar, in district of Motihari, East Champaran.
 2. Prabhat Kumar Singh, Son of Rameshwar Prasad Singh, Advocate, Civil Court Motihari, Resident of Raja Bazar, Motihari, East Champaran.
 3. Dharm Nath Prasad, Son of Sri Bala Shah, Advocate Civil Court, Motihari, Resident of Balua Chowk, Motihari, East Champaran.
 4. Jamuna Prasad, Son of Sri Jainath Prasad, Advocate, Civil Court, Motihari, Resident of Raja Bazar, District-Motihari (East Champaran).

.... Petitioners

Versus

1. The State of Bihar.
2. Bihar State Bar Council, through its Secretary, having its office in the Bihar Bar Council Bhawan, Near Patna High Court, Patna.
3. Chairman, Bihar State Bar Council, Bar Council Bhawan, Near Patna High Court, Patna.
4. Bar Council of India, through its Secretary, New Delhi.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Mukul Sinha, Advocate.
Mr. Rajesh Kumar, Advocate.
For the Respondent/s : Mr. Lalit Kishore, PAAG-1.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 09-02-2017

The challenge in the present writ application is to Clause 15 of the Resolution No. 29 of 2005 approved by the Bar Council of India at its meeting held on 26/27.06.2005. By the said resolution, "Rule 34" was added in the Model Rules. The offending clause reads as under:

"34. Notwithstanding any rule or thing contained herein the Council shall have supervisory power over all the Associations and shall take any decision and its decision shall



be final and conclusive and shall not be challenged in any court of law.”

2. The challenge is limited to the ground that the directions issued by the Council shall not be challenged in any court of law is illegal, as the jurisdiction of the Civil Court cannot be barred by such process. It is contended that in terms of Section 9 of the Code of Civil Procedure, the jurisdiction of the Civil Court is plenary in nature which can be either expressly or impliedly barred.

3. Since there is no express bar of the jurisdiction of the Civil Court, the implied bar can be extended only if any alternative machinery for resolution of disputes is created under the statute. The jurisdiction of the Civil Court has been barred in respect of decisions taken by the State Bar Council. Any rule which gives immunity to the actions of the State Bar Council cannot be sustained as the plenary jurisdiction of the Civil Court cannot be curtailed by virtue of the resolution in absence of the provision in the statute.

4. Reference may be made to a judgment reported as Dhruv Green Field Ltd. v. Hukam Singh (AIR 2002 SC 2841), wherein the principles with regard to exclusion of the jurisdiction of the Civil Court cannot be inferred has been delineated. The Court held as under:

“10. In the light of the above discussion, the following principles may be restated:



(1) If there is express provision in any special Act barring the Jurisdiction of a Civil Court to deal with matters specified thereunder the jurisdiction of an ordinary Civil Court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a Civil Court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the Civil Court is barred. If, however, no such adequate and effective remedy is provided then exclusion of the Jurisdiction of the Civil Court cannot be inferred.

(3) Even in cases where the Jurisdiction of a Civil Court is barred expressly or impliedly, the Court would nonetheless retain its Jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.”

5. In view thereof, the Rule 34 that the decision taken by the Council shall not be challenged in any court of law is illegal as the jurisdiction of the civil court cannot be barred in the above manner.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Mishra

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	17.02.2017
Transmission Date	

