

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19081 of 2018

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Md. Shamim Akhtar @ Md. Shamim, S/o Late Abdul Majid, Resident of
Village-Pothia Dhekabhinja, P.s. and District-Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Registration, Bihar, Patna.
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General Registration, Purnea Division, Purnea.
4. The Collector, Kishanganj.
5. The District Registrar, Kishanganj.
6. The District Sub-Registrar, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Adv.
For the Respondent/s : Mr. Amresh Kumar Singh, GA-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-10-2018 Heard learned counsel for the petitioner and
respondent-State.

The present writ application has been filed for setting aside the order dated 27.03.2017, passed in Case No.8/2016, as contained in Annexure-2, by Respondent No.3, the Assistant Inspector General, Registration, Purnea Division, whereby, the petitioner has been directed to deposit the deficient stamp duty to the tune of Rs.1,03,280/- and the penalty at the rate of 10% amount to the deficient stamp duty to the tune of Rs.10,328/- within a period of sixty days and in case of non-deposit of the same, within sixty days, the petitioner has been further directed



to deposit, the interest at the rate of 5% per month on the amount of deficit stamp duty. Further prayer has been made for quashing of order dated 07.04.2017, passed by Respondent No.6, the Sub-Registrar, Kishanganj, whereby, the petitioner has been directed to deposit the amount to the tune of Rs.1,13,608/- against deficit stamp duty and the registration fee.

It is well settled law that the discretionary jurisdiction conferred under Section 226 of the Constitution of India is usually not exercised when there is an alternative efficacious remedy of appeal, and in exceptional circumstances, as laid down in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1*, wherein it has been held that the High Court has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, but the alternative remedy does not operate as a bar in certain circumstances, such as, enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge. Paragraph 15 of the judgment reads as follows:



“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Since alternative remedy of appeal is available under Rule 13 of the Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995 against an order passed under Section 47A(2) of the Indian Stamp Act, 1899, the writ application is disposed of with a liberty to the petitioner to file appeal before the appropriate authority.

It is expected from the appellate authority that if such appeal is filed against the impugned order dated 27.03.2017 within a period of four weeks from the date of receipt/production of a copy of this order, along with an



application for condonation of delay in filing of the appeal, then the appellate authority will consider the same, within a period of six weeks thereafter, keeping in view the fact that writ application was pending before this Court.

For four weeks, from the receipt of the order, let no coercive steps be taken against the petitioner in pursuance to the impugned order dated 27.03.2017, passed in Case No.8/2016, as contained in Annexure-2, issued by Assistant Inspector General, Registration, Purnea Division, Purnea.

It is made clear that this Court has not expressed any opinion with regard to the merits of the case.

(Dinesh Kumar Singh, J)

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