

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.182 of 2018

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1. Lok Seva Thrift And Credit Self Supporting Cooperative Societies Ltd. having its Office at Shastri Nagar, Road, No.2, Chhoti Ekmi, P.O.-Laheriasarai, P.s.-Lajeriasarai, District-Dharbhanga through its Adhyaksh-Cum-Chief Promoter Deepak Kumar Jha.
 2. Deepak Kumar Jha, Son of Shri Sharawan Jha, 10 G.M. Road, Behind ICICI Bank, Raj kumar Ganj, Lalbagh, Town and District-Darbhanga-846004 at Present Adhyaksh-Cum-Chief Promoter of Petitioner No.1

... .. Appellant/s

Versus

1. The State of Bihar
2. Registrar, Co-operative Societies, Patna.
3. Deputy Registrar (Cane), Co-Operative Societies, Bihar, Patna.
4. The Assistant Registrar, Co-operative Societies, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogendra Mishra, Senior Advocate Mr. Arvind Kumar Jha, Advocate
For the Respondent/s	:	Mr. Raj Ballabh Pd.Yadav AAG 11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-02-2018

Seeking exception to an order dated 25.01.2018 passed by the learned Writ Court in refusing to exercise jurisdiction on account of availability of alternate remedy and in the absence of the alternate remedy being effective and functional relegating the appellants to take recourse to a common law remedy of filing of a



civil suit, this appeal has been filed under Clause 10 of the Letters Patent.

Appellants filed an application seeking registration of self-supporting Co-operative Society under the Bihar Self Supporting Co-operative Societies Act, 1996 (hereinafter referred to as 'the Act') and when the application for registration was dismissed by the Assistant Registrar, Co-operative Societies, Bihar, Patna by the impugned order dated 03.08.2017, challenging the same, the writ petition in question was filed.

When the matter was examined by the Writ Court, learned Court found that against an order passed by the Assistant Registrar rejecting an application for registration, the statutory remedy under the Act is available and an appeal is maintainable before the Co-operative Societies Appellate Tribunal under sub-section (6) of Section 5 of the Act. However, finding that the Tribunal is not functional and, therefore, efficacious remedy as on date under the Statute is not available, the learned Writ Court in stead of exercising jurisdiction under Article 226 of the Constitution has relegated the appellants to take recourse to the remedy of filing a civil Suit.

In our considered view, when the statutory remedy by way of an appeal to a Tribunal was available and when the statutory



Tribunal was not functional, the efficacious remedy was not available and relegating the appellants to take recourse to the common law remedy of filing a civil suit was not the proper course to be adopted by the learned Writ Court.

It is a well settled principle of law that when a statutory Tribunal has been created and is non-functional, this Court can always exercise its extra-ordinary jurisdiction under Article 226 of the Constitution and take action in the matter.

For the present, relegating the appellants to take recourse to the filing a civil suit in the matter of registration of a Co-operative Society, in our considered view, was not called for. Once the Tribunal was not functional, the learned Writ Court should have either directed the State Government to constitute a Tribunal and to make it functional or adjudicate the dispute exercising its extra-ordinary jurisdiction under Article 226 of the Constitution. This having not been done, the remedy of filing a civil suit being not an efficacious or even an alternate remedy with regard to statutory provision contained, we allow this appeal, quash the order passed by the learned Writ Court on 25.01.2018 in Civil Writ Jurisdiction Case No. 15352 of 2017 and restore the writ petition to its original file and request the learned Writ Court to proceed in the matter in accordance to law.



With the aforesaid, the appeal stands allowed and disposed
of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2018
Transmission Date	

