

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.431 of 2019

In

Civil Writ Jurisdiction Case No.7775 of 2003

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Dalmia DSP Limited having its Registered Office at 2 and 3, Dr. Rajendra Prasad Sarani, Kolkata-700001 and a Branch Office at Nutan Plaza, 6th Floor, Behind Maurya Lok, Near Fraser Road, P.s.- Kotwali, Patna-800001 through Mr. Saikat Dhar, M, 43 Years, Authorized Signatory

... .. Appellant/s

Versus

1. The State of Bihar
2. Environment and Forest Department Bihar through its Secretariat, Secretariat, Patna
3. Secretary Environment and Forest Department, Bihar, Secretariat, Patna
4. Divisional Forest Officer Shahabad Forest Division, Rohtas, Sasaram
5. Collector Rohtas, Distt.- Rohtas, Sasaram

... .. Respondent/s

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with

Letters Patent Appeal No. 433 of 2019

In

Civil Writ Jurisdiction Case No.7775 of 2003

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Dalmia DSP Limited having its Registered Office at 2 and 3, Dr. Rajendra Prasad Sarani, Kolkata-700001 and a Branch Office at Nutan Plaza, 6th floor, Behind Maurya Lok, Near Fraser Road, P.S. Kotwali, Patna-800001 through Mr. Saikat Dhar, aged 43 years, Authorized Signatory

... .. Appellant/s

Versus

1. The State of Bihar
2. Environment and Forest Department Bihar through its Secretariat, Secretariat, Patna
3. Secretary Environment and Forest Department Bihar Secretariat, Patna
4. Divisional Forest Officer Shahabad Forest Division, Rohtas, Sasaram
5. Collector Rohtas, District Rohtas, Sasaram

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 431 of 2019)

For the Appellant/s : Mr. Umesh Prasad, Sr. Adv.
Mr. Abhimanyu Vats, Adv.

For the Respondent/s : Mr.Sarvesh Kumar Singh (AAG 13)
(In Letters Patent Appeal No. 433 of 2019)



For the Appellant/s : Mr.Umesh Prasad, Sr. Adv.
Mr. Abhimanyu Vatsa, Adv.
For the Respondent/s : Mr.Sarvesh Kumar Singh (AAG 13)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-07-2019

Heard Shri Umesh Prasad, learned senior counsel for the appellants, and Shri Sarvesh Singh, learned counsel for the State.

There are two appeals filed arising out of the same judgement; one is against the judgement on merits and the other appeal is against the rejection of I.A. No.1 of 2019 that had been filed for allowing the appellant to contest the writ petition in place of the original writ petitioner. We are mentioning these facts as the office has pointed out a defect with regard to the name of the parties, particularly the fact that the name of the appellant does not appear in the array of the parties of the writ petition. We may put on record that the writ petition had been filed by the predecessor-in-interest of the appellant, namely, Kalyanpur Cement Limited, the writ petitioner in C.W.J.C. No.7775 of 2003.

The petition has been dismissed and, simultaneously, the application moved by the applicant to



pursue the writ petition on behalf of the original writ petitioner has also been rejected.

The office note, therefore, mentions about the difference in the name of the parties which is obvious, inasmuch as the writ petition came to be dismissed without allowing the application filed by the appellant seeking permission to pursue the petition. It is in this context that L.P.A. No.433 of 2019 has been filed contending that the appellant ought to have been allowed to pursue the writ petition and, therefore, this appeal has been filed only for the purpose of setting aside the order passed on I.A. No.1 of 2019 so as to enable the learned Single Judge to substitute the appellant in place of Kalyanpur Cement Limited and then proceed in the matter.

In our opinion, the absence of the name of the appellant in the array of parties, therefore, stands explained accordingly, inasmuch as the appellant had moved the application which came to be rejected which, in our opinion, could not have been done, the reason being that there was no objection to the appellant being substituted in place of the original writ petitioner Kalyanpur Cement Limited. We have further perused the averments made in the counter affidavit and the facts narrated in L.P.A. No.431 of 2019 and we find that the



appellant had clearly set up this plea in I.A. No.1 of 2019 that it has stepped into the shoes of Kalyanpur Cement Limited. We, therefore, find that the rejection of I.A. No.1 of 2019 was absolutely unwarranted. Apart from this, there appears to be a procedural flaw, inasmuch as if the application had been rejected, then there was no occasion for the Writ Court to have proceeded on the merits of the matter, inasmuch as there was no proper or necessary party on record against whom a judgement could have been delivered. We, therefore, find that a proper substitution ought to have been carried out or the matter could have been dismissed in default. The learned Single Judge appears to have heard the matter and, presumably, proceeded to reject the request for adjournment and decided the matter, the judgement whereof is stated to have been uploaded after a month of the delivery of the order.

In view of the aforesaid facts noted by us and the reason that the writ petition could not have proceeded without proper substitution, we find that the rejection of I.A. No.1 of 2019 in C.W.J.C. No.7775 of 2003 was not justified.

We, accordingly, allow this appeal and set aside the order dated 21.2.2019, insofar as it relates to the rejection of I.A. No.1 of 2019.



In view of what has been held by us hereinabove and since the order relating to the substitution prayed for by the appellant has been set aside by us, the judgement dated 21.2.2019 also cannot survive. We, therefore, allow both the appeals setting aside the entire order dated 21.2.2019.

Learned counsel for the appellants has submitted that no unwarranted adjournment shall be sought before the learned Single Judge. We, therefore, dispose off these appeals and restore C.W.J.C. No.7775 of 2003 to its original number which shall be heard and disposed off by the appropriate Bench according to the roster.

Let the matter be listed before the concerned learned Single Judge on 13th August, 2019.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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