

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1737 of 2017

In
Civil Writ Jurisdiction Case No.18103 of 2016

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M/s Lakhan Homes Ltd. through its Managing Director, Sanjay Kumar S/o Yogendra Singh having its registered office at A - 2, 2nd Floor Lakhan Sona, P.O. - Danapur Cantt., P.S. - Rupaspur, District - Patna.

... .. Appellant/s

Versus

1. The Union Of India through the Finance Secretary, Finance Department, New Delhi
2. The Housing and Urban Development Corporation through its Secretary, having its Regional Office at Mourya Lok Complex, Dak-Bungalow, Patna
3. The Recovery Officer, Debt Recovery Tribunal, Ashiyana Digha Road, Patna.
4. The Presiding Officer, Debt Recovery Tribunal, Ashiyana Digha Road, Patna.
5. Yogender Singh S/o Late Ram Lakhan Singh (Certificate Debtor No.4) Resident of Mohalla - Shekhpura, Durga Ashram Gali, P.S. - Shastri Nagar, District - Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : None
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 29-11-2019

None appears for the appellant.

The appellant has prayed for the following relief:-

“It is, therefore, prayed that your lordships may graciously be pleased to admit this appeal, issue notice upon the respondents and after hearing the parties be pleased to set aside the order dated 21.11.2017 passed



in CWJC No. 18103 of 2016.”

The impugned order in toto is reproduced as under:-

“C.W.J.C. No. 18103 of 2016

This writ petition has been filed for quashing the order or “warrant of attachment of immovable property” dated 07.10.2016 issued order the seal & signature of the Recovery Officer, Debts Recovery Tribunal, Patna in connection to R.P. No. 171/2013, arising out of the order dated 23.10.2013 in O.A. No. 68 of 2013.

2. At the very outset, learned counsel for the respondents invites attention to paragraphs 5 and 6 of the counter affidavit filed on behalf of respondent no. 2, wherein a categorical stand has been taken that the warrant of attachment has already been executed and the report submitted by the Advocate Commissioner and hence the writ petition has become infructuous. It has further been stated that the petitioner has alternative remedy under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 against any order passed by the Recovery Officer and hence the present writ petition is not maintainable.

3. Learned counsel for the petitioner has not refuted the stand of the respondents as no rejoinder in this regard has been filed.

4. In the above view of the matter, C.W.J.C. No. 18103 of 2016 stands dismissed with the observation that the petitioner may take remedial steps before the appropriate forum in accordance with law for redressal of its grievances. I.A. No. 9896 of 2016 also stands disposed of.

C.W.J.C. No. 5368 of 2017.

The present writ petition has been filed for quashing the part of Warrant of Attachment of Immovable Property dated 07.10.2016



issued by the Recovery officer, Debts Recovery Tribunal, Patna, whereby 60% share of the Builder i.e. respondent no. 7 in Lakhan Cottage situated at Khata No. 229, Survey Plot No. 326, Tauzi No. 5292, Thana No. 23, Mauza Saguna, Pargana-Phulwari, P.S. Danapur, District- Patna, which includes the Flat of the petitioners sold by the Developer of the Apartment (respondent no. 7) i.e. serial no. (i) of schedule of Property mentioned in attachment notice; and to recover the amount due against the Developer from whom petitioners have purchased the flat and from the secured assets of other certificate debtors mentioned at serial no. (ii) of schedule of Property mentioned in the attachment notice.

2. Learned counsel for the respondents relies on the counter affidavit filed in C.W.J.C. No. 18103 of 2016 to submit that the warrant of attachment in question, which is the same in both the writ petitions, has already been executed and hence the prayer for quashing the warrant of attachment has become infructuous.

3. In this view of the matter, this prayer of the petitioners is rejected.

4. So far as the second prayer of the petitioners for recovery of the amount due against the Developer is concerned, the relief sought is against the private respondent no. 7 being the Developer of the property and not against the Bank with whom the petitioners did not have any privity of contract. This prayer is thus held to be not maintainable and stands rejected.

5. In the result, the writ petition stands dismissed as aforesaid with liberty that the petitioners may take remedial steps before the appropriate forum in accordance with law for redressal of their grievances.”



There is no perversity in the order impugned in this intra-Court appeal, which we find emanating from the records.

In **Ram Kishan Fauji v. State of Haryana & Ors., (2017) 5 SCC 533**, the Supreme Court has culled out the following principles governing the power of the High Court in exercising jurisdiction under the Letters Patent.

“42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:-

42.1 An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2 The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3 A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution and determination by the High Court under the said Article and, hence, no intra-court appeal is entertainable.

42.4 The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a



straitjacket formula for the same.”

The Apex Court has reiterated the similar principles in
**Life Insurance Corporation of India Vs. Nandini J. Shah
and others., (2018) 15 SCC 356.**

Prior thereto, the Apex Court had culled out similar
principles in **Jogendrasinhji Vijaysinghji Vs. State of Gujarat
& Ors., (2015) 9 SCC 1.**

As such, this appeal is dismissed.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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