

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21052 of 2018

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National Agricultural Cooperative Marketing Federation Ltd., a Cooperative Society registered under the provisions of Societies Act having its Office at IIIrd Floor Deepsheela Complex, Budh Marg, Patna through its Branch Manager Om Prakash Narain Singh, son of Late Sachidanand Singh, resident of Flat No.102 Apna Ghar Apartment, East Lohia Nagar Road No.1A Kankarbag, Sampatchak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Tribunal through its Secretary, having its office at Anta Ghat, Patna.
3. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 21980 of 2018

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National Agricultural Cooperative Marketing Federation Ltd., a Cooperative Society registered under the provisions of Societies Act having its Office at IIIrd Floor Deepsheela Complex, Budh Marg Patna through its Branch Manager Om Prakash Narain Singh, son of Late Sachidanand Singh, resident of Flat No.102 Apna Ghar Apartment, East Lohia Nagar Road No.1A Kankarbag, Sampatchak, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Tribunal through its Secretary, having its office at Anta Ghat, Patna.
3. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 7023 of 2017

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M/s India Pharmaceuticals through its Proprietor Gatrui Mal Kanodia, son of Late Madan Lal Kanodia, having its office at Chouk Sikarpur, Patna City, P.S. Chauk, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Commissioner of Commercial Tax, Bihar, Vikash Bhawan, Patna.
3. The Deputy Commissioner of Commercial Tax, West Circle, Patna City.
4. The Assistant Commissioner of Commercial Tax, West Circle, Patna City.
5. The Assessment Officer, Commercial Taxes, West Circle, Patna City.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 21052 of 2018)

For the Petitioner/s : Mr. D.V.Pathy, Adv.
For the Respondent-State : Mr. Lalit Kishore, AG
Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 21980 of 2018)

For the Petitioner/s : Mr. D.V.Pathy, Adv.
For the Respondent/s : Mr. Lalit Kishore, AG
Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 7023 of 2017)

For the Petitioner/s : Mr. Alok Kumar Sinha, Adv.
Mr. Bhola Kumar, Adv.
For the Respondent/s : Mr. Lalit Kishore, AG
Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 07-02-2019

Heard Mr. D.V. Pathy, learned counsel appearing for the petitioner in CWJC No.21052 of 2018 and CWJC No.21980 of 2018 and Mr. Alok Kumar Sinha assisted by Mr. Bhola Kumar, the Advocate on record in CWJC No.7023 of 2017. Mr. Lalit Kishore, learned Advocate General assisted by Mr. Vikash Kumar, learned Standing Counsel No. 11 appears for the State.

Since the issue raised in these writ petitions are common as such with the consent of the parties, the same have been heard analogous and are being disposed of by this common judgment.

The petitioner(s) of CWJC No.21052 of 2018 and CWJC No.21980 of 2018 seek to question the order dated



27.08.2018 passed by the Commercial Taxes Tribunal, Patna (hereinafter referred to as 'the Tribunal') in Appeal Case No.PT-119 of 2014 (M/s National Agricultural Cooperative Marketing Federation Ltd. vs. the Department) and Appeal Case No.PT-118 of 2014 (M/s National Agricultural Cooperative Marketing Federation Ltd. vs. the Department) respectively, whereby the plea of waiver set up by the petitioner under section 73(2) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and the Rules framed thereunder in respect of 20% of pre-deposit of the disputed amount, has been rejected.

The petitioner of CWJC No.7023 of 2017 in a similar manner seeks to question the order dated 04.10.2016 passed by the Bihar Commercial Taxes Tribunal, Patna in Appeal Case No.PT-230 of 2013 (M/s India Pharmaceutical vs. State of Bihar) whereby the plea of waiver set up by the petitioner under Section 73(2) of 'the Act' and the Rules framed thereunder in respect of 20% of pre-deposit of the disputed amount has been rejected.

Mr. Pathy, learned counsel appearing for the petitioner(s) in reference to section 73(2) of 'the Act' submits that the circumstances attached to section 73(2) of 'the Act' allows 'the Tribunal' to waive of this pre-deposit by recording



reasons to such effect and the same prescription would apply even where 'the Tribunal' has proceeded to reject such prayer. In reference to the orders impugned in these writ petitions, he submits that no reasons have been assigned. It is on this plea that the writ petitioner setting up grounds of non-application of mind and failure of 'the Tribunal' to record reasons for rejection of the plea of waiver that the writ petitions are filed which is opposed by the learned Advocate General in reference to the provisions underlying Section 79 of 'the Act' which inter alia, makes every order passed by 'the Tribunal' appealable before the High Court if it involves a substantial question of law.

It is, thus, the argument of the learned Advocate General that where the law makes every order appealable before the High Court on the issue of substantial question of law, the grievance so raised has to be raised in an appropriate proceeding and not through a writ petition.

Learned Advocate General has thus raised a preliminary objection as to the maintainability of the writ petitions itself in view of the stipulations present in section 79 of 'the Act'.

Responding to the preliminary objection so raised by the learned Advocate General, Mr. Pathy canvassed that since



according to the petitioner(s), the order of rejection does not involve a substantial question of law as laid down by the Supreme Court in the judgments reported in **(2001) 3 SCC 179 (Santosh Hazari vs. Purushottam Tiwary)**, paragraphs 8 & 12 and **(2012) 11 SCC 651 (Union of India vs. Guwahati Carbon Limited)**, paragraph 4, that the petitioner(s) have invoked the forum of extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India in this Court.

We have heard learned counsel for the parties and perused the records and we do not intend to engage ourselves in a long-drawn discussion as to the forum available to the petitioner(s).

Section 79 of 'the Act' is in very specific terms and which runs as under:

“79. Appeal before High Court.- (1) An appeal shall lie to the High Court from every order passed by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner or a dealer aggrieved by any order passed by the Tribunal,-

(i) under the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) as it stood before its repeal by Section 94, on or after the date of commencement of this Act; or

(ii) under this Act,

may file an appeal to the High Court, and such appeal under this Section shall be filed within ninety days from the date of the communication to the dealer or the Commissioner on any question of law arising out of such order.



(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate the question.

(4) The appeal shall be heard only on the question so formulated and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub- section shall be deemed to take away or abridge the power of the High Court to hear for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5)(a) The High Court shall decide the substantial question of law so formulated or involved and deliver such judgment thereon containing the grounds on which such decision is founded and may award such costs as it deems fit.

(b)The High Court may determine any issue which-

(i) has not been determined by the Tribunal, or

(ii) has been wrongly determined by the Tribunal, by reason of a decision on such question of law as is referred to in sub- section (1).

(6) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to High Court, shall as far as may be, apply in the case of appeals under this Section.

A plain reading of the stipulation underlying section 79 of 'the Act' makes eloquent the intent of the legislature in making every order passed by 'the Tribunal', appealable before the High Court with no exceptions. Whether or not the issue so raised by the petitioners herein involves a substantial question of law, is a matter to be considered by the High Court as and when the occasion arises and is not for the litigant to decide, as canvassed by Mr. Pathy.



It is the argument of Mr. Pathy that 'the Tribunal' has abdicated its jurisdiction vested under section 73(2) of 'the Act' in failing to record reasons for such rejection of the plea of waiver made by the petitioner. According to him, in the circumstances reflecting from the orders impugned in writ petition(s), the writ is the most appropriate remedy and not appeal because the failure to exercise jurisdiction by 'the Tribunal' in the manner prescribed is not a substantial question of law.

We completely fail to appreciate the arguments of Mr. Pathy because the legislative intent underlying section 79(1) of 'the Act' leaves no conditions as to which order of the Tribunal can be pre-judged on the issue of substantial question of law. Since we are satisfied to uphold the preliminary objection raised by the learned Advocate General, we do not deem it necessary to give a long-drawn opinion on the issue canvassed however since an issue of such kind has been raised before us we are persuaded to take note of the opinion of the Full Bench of this Court in a judgment reported in **2009 (3) PLJR 990 (Sunita Kumari vs. Prem Kumar)** when the Full Bench of this Court while testing similar prescriptions underlying section 19 of the Family Court Act, 1984 which also did accompany an



exception, has observed thus:

“12. The word decree is conspicuous by its absence in Section 19(1) of the Act and the *non-obstante* clause noticed above clearly means that the distinction made in the Code of Civil Procedure between appeals from original decrees and those from Orders have been done away with. As a result, the provision for appeal under Section 19 of the Act is mean to take care of all kinds of judgments and orders of the Family Courts, not being interlocutory in nature, regardless of the fact that whether such judgments and orders amount to a decree as defined under the Code of Civil Procedure or not. The instances of various kinds of orders from which appeals lie under Section 104 of the Code of Civil Procedure indicate that many of such orders though made appealable, do not amount to a decree as defined under Section 2(2) of the Code of Civil Procedure. Decree is a formal expression of only that adjudication which for the court concerned, conclusively determines the right of the parties with regard to all or any of the matter in controversy in the suit. It may be either preliminary or final. The definition of decree further provides that it shall not include (a) any adjudication from which an appeal lies as an appeal from an order (enumerated in Section 104 of the Code of Civil Procedure) or (b) any order of dismissal for default. But even such orders are covered by the provision for appeal under Section 19 of the Act and hence the Legislature clearly intended to cover all kinds of judgments and orders whether amounting to decree or not under the expression “every judgment or order” occurring in Section 19 of the Act.

13. If it is held that appeals under Section 19 have to be treated as First Appeal then it would follow that provision for appeal under Section 19 is not available in respect of orders which do not amount to a decree although they may not be interlocutory orders as is the nature of impugned order in M.A. No.191 of 2009. Such interpretation would be against the intention of the Legislature which is evident from plain meaning of expressions



used in Section 19 of the Act. The omission of the word “decree” from Section 19(1) is clearly intentional and deliberate and there is no need to incorporate the word “decree” into that Section of the Act by way of interpretation. Section 19 of the Act requires no interpretation because it neither suffers from any vagueness nor creates a situation of unwarranted hardship or injustice. To the contrary labelling the appeals under Section 19 of the Act as Miscellaneous Appeals would serve one of the purposes of the Act which is to secure speedy settlement of dispute relating to marriage and family affairs. The provisions in the Patna High Court Rules governing First Appeals are much more detailed and formal than those governing Miscellaneous Appeals. The cause of justice as per requirement of the Act is also best subserved by the view expressed above.”

The Full Bench of this Court taking note of the various forms of order passed by the Family Court, some of which, constituted a decree while other would not fall into such category, yet determining inter-party rights, has concluded that as per the legislative intent underlying section 19 of the Family Court Act each and every order passed by the Family Court would be appealable before the High Court notwithstanding its nature and character save and except an interlocutory order and the reason recorded is, because section 19 of the Family Courts Act makes every order of a Family Court appealable before the High Court except, the interlocutory orders.

As to what would be the forum available for a litigant in case of interlocutory order stands answered in another Full



Bench Judgment of this Court reported in **2010 (3) PLJR 632 (Neelam Kumari Sinha vs. Shree Prashant Kumar)**. In so far as the case(s) in hand is concerned ‘the Act’ has given no such exception but made every order of ‘the Tribunal’ appealable before the High Court.

In the circumstances noted, we are of the considered opinion that writ is not a proper forum to contest the order of ‘the Tribunal’ on the issue of waiver of the pre-deposit of fee under section 73(2) of ‘the Act’ and the writ petitions are thus dismissed as not maintainable. However, this order would not preclude the writ petitioner(s) to take proper recourse in terms of the statute.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/Skpathak

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2019
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