

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1539 of 2017

In

Civil Writ Jurisdiction Case No.11159 of 2017

Kashi Prasad, Son of Late Narayan Sah, R/o Village P.O.- Sirsiya Khurd, P.S. Adapur, District- East Champaran.

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary Food and Civil Supply, Bihar, Patna
2. Managing Director, Bihar State Food and Civil Supplies Corporation Ltd.
3. The District Manager-cum- Collector, Sitamarhi.
4. The Certificate Officer, Sitamarhi.
5. The District Manager, Bihar State Food Corporation, Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s : None

For the Respondent/s : Mr.Vishwambhar Prasad, AC to AAG 5

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

8 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 memo of appeal, issue notice to the respondents and after hearing the parties your Lordships be further pleased to allow this appeal and set aside the judgment and order dated 20.09.2017 passed in CWJC No. 11159 of 2017.”

The impugned order in toto is reproduced as under:-

“Heard learned counsel for the petitioner and the counsel for the State.

In this case the petitioner is challenging the final order dated 03.07.2017 passed in Certificate Case No. 4 of 2016-17, whereby and whereunder, body



warrant has been issued against the petitioner.

The petitioner, if so advised, may file an appeal in terms of Section-60 of the Bihar and Orissa Public Demand Recovery Act, 1914. The order of body warrant is kept in abeyance till six weeks from today, enabling the petitioner to file an appeal before the appellate authority. It is clarified that if the petitioner fails to file the appeal within six weeks from today, in such circumstance, the interim relief granted in favour of the petitioner will be treated to be withdrawn.

With the aforesaid observations and directions, this writ application is disposed of.”

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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