

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Review Application No.LP-3 of 2019 in
Letters Patent Appeal No.181 of 2019
Date of Decision :15.02.2019**

Ajit Pal Singh

.....Applicant

Versus

Gurpreet Kaur

..... Respondent

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Rachit Kaushal, Advocate for the applicant-appellant.

KRISHNA MURARI, CHIEF JUSTICE (Oral):

By means of this application under Order 47 Rule 1 CPC., read with Section 114 of the Code of Civil Procedure, the applicant seeks review of the order dated 31.01.2019 dismissing the Letters Patent Appeal filed under Clause X of the Letters Patent as not maintainable.

2. Facts in brief required to be noticed are as under:-

An application filed by the respondent herein under Article 227 of the Constitution of India challenging the order dated 19.03.2018 passed by the trial Court, whereby the defense was struck off, was disposed of vide order dated 26.04.2018 directing the trial Court to grant one opportunity to file the written statement subject to payment of Rs.2,000/- as costs. An application was made by the applicant-appellant herein to recall the aforesaid order on the ground that it was passed ex-parte without any notice or opportunity of hearing. The application was disposed of by the learned Single Judge by making the following order:-

“At the outset, learned counsel for the non-applicant-petitioner submits that the instant application has rendered infructuous, in view of the fact that pursuant to the order dated 26.04.2018, written statement by petitioner-Gurpreet Kaur had already been filed before the trial Court.

Considering the above factual aspect of the matter, nothing survives for consideration in this application and the same is dismissed as having rendered infructuous.”

3. Aggrieved by the aforesaid order, a Letters Patent Appeal was preferred which was dismissed as not maintainable vide order under review.

4. Learned counsel for the review applicant has relied upon a Full Bench judgment of this Court in case Parshotam Dass v. State of Haryana AIR 2003 (P&H) 301, to contend that the appeal would be maintainable. We are afraid that the reliance is totally misfounded as the ratio of the decision of the Full Bench does not support the contention of the learned counsel for the review applicant that the present intra Court appeal would be maintainable. The following two questions were referred to for adjudication by the Full Bench:-

- i) Whether the Letters Patent Appeal would lie against the judgment and decree passed by the learned Single Judge in an appeal arising from an original or appellate decree or order?
- ii) Whether the Letters Patent Appeals filed before 01.07.2002 are liable to be dealt with and decided in accordance with

amended Section 100-A of the CPC?

5. The Full Bench after analyzing the amended provisions of amended Section 100-A, Clause X of the Letters Patent, answered the two questions posed before it as under:-

“In view of the above discussion, our answer to question No.1 is in the negative and it is held that no Letters Patent Appeal would lie against the judgment and decree passed by the learned Single Judge arising from an original, appellate decree or an order.”

Apart from the above, a bare reading of clause (b) of Section 100-A which provides that no further appeal shall lie from the judgment, decision or order of the learned Single Judge made on an application under Articles 226 and 227 of the Constitution.

6. In so far as question No.2 is concerned, the Full Bench after analyzing the amended provisions of Section 100-A of the Code of Civil Procedure which came into effect from 01.07.2002 held as under:-

“Our answer to the second question is that the Letters Patent Appeal filed before 01.07.2002 would not be dealt with and decided by applying the provisions of Section 100-A of 2002 Act”.

Thus, the Full Bench decision relied upon by learned counsel for the review applicant cannot be treated as an authority to hold that a Letters Patent Appeal would be maintainable against an order passed by the learned Single Judge on an application made under Article 227 of the Constitution of India challenging the orders passed by a Civil Court.

7. On the contrary, the issue of maintainability of a Letters Patent

Appeal under Clause X of the Letters Patent against an order passed by the learned Single Judge challenging an order passed by the Civil Court is no longer res-integra and stands concluded by a judgment of the Hon'ble Apex Court rendered in the case of ***Radhey Shyam and another v. Chhabi Nath and others*** 2015(5) SCC 423.

Not just that a similar question arose before the Division Bench of this Court in **LPA No. 816 of 2015 (Col. Raghbir Singh and others Vs. The Punjab & Haryana High Court and others)** against an order rendered by the learned Single Judge under Article 227 of the Constitution arising out of the order dated 09.03.2015 passed by the District Judge, Rupnagar upon an application under Order 7 Rule 11 of the Code of Civil Procedure: **“When the appeal came up for hearing before a Division Bench of this Court on 27.05.2015, the counsel for the appellants sought time to argue regarding maintainability of Letters Patent Appeal in the matters arising out of petitions filed under Article 227 of the Constitution against the orders passed by subordinate Court.”** And, upon a consideration of the various decisions of the Supreme Court as also the judgment in **Radhey Shyam (supra)**, the Division Bench concluded:-

“12. A perusal of the above clause shows that the provisions of the Letters Patent of Bombay High Court are different than the Punjab High Court, which exclude the intra Court appeal against the order passed in revisional jurisdiction. Even under the Letters Patent (Bombay), an appeal is not maintainable against an order passed in petition under Article 227 of the Constitution.

13. The finding that appeal is maintainable in Sushilabai Laxminarayan Mudiyar and Umaji Kesho Meshram cases (supra), is when an order is passed in a petition under Article 226 and 227 of the Constitution. In view of the judgment in Radhey Shyam's case (supra), an order passed by the Civil Court cannot be challenged in a writ petition. Therefore, an order passed in exercise of powers under Article 227 of the Constitution is not subject to appeal under Clause 10 of the Letters Patent.

14. In view of the above, we find that an appeal under Clause 10 of the Letters Patent is not maintainable against an order passed by the learned Single Judge against the order of the Civil Court. It is only order passed in exercise of the powers under Article 226 of the Constitution, which is appealable.

15. Consequently, the present letters patent appeal is dismissed as not maintainable.”

8. In the wake of the above, the review application is devoid of merit and is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

15.02.2019

ravinder/Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No