

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.261 of 2019

In

CIVIL REVIEW No.280 of 2017

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1. Om Prakash Singh and Anr S/o Late lakhan Singh R/o Village jalalpur Police Station Danapur District patna
 2. Jay Prakash Singh S/o Late Lakhan Singh R/o Village jalalpur Police Station Danapur District patna

... .. Appellant/s

Versus

1. Mostt. Sumitra Devi and Ors R/o Village jalalpur Police Station Danapur District patna
2. Lalan Singh S/o late Baldeo Singh R/o Village Jalalpur Police Station Danapur District patna
3. Lalendra Singh S/o Late Baldeo Singh R/o Village jalalpur Police Station Danapur District patna
4. Heera Devi W/o Late Ramdeo Singh R/o Village jalalpur Police Station Danapur District patna
5. Sulekha Devi D/o Late Ramdeo Singh R/o Village Jalalpur Police Station Danapur District Patna
6. Sambhu Singh R/o Village Jalalpur Police Station Danapur District Patna
7. Sanjay Singh R/o Village Jalalpur Police Station Danapur District Patna
8. Ravindra Singh sons of Late Ramdeo Singh R/o Village Jalalpur Police Station Danapur District Patna
9. Satyanand Singh S/o Late Siya Saran Singh R/o Village Jalalpur Police station Danapur District Patna
10. Mostt Kabutri Devi W/o Late Pabitra Gope R/o Village Naya Tola Saguna ,PO Danapur P S Danapur Cantt District Patna
11. Amarjeet Rai S/o late Pabitra Gope R/o Village Naya Tola Saguna, PO -Danapur PS- Danapur Cantt. District Patna
12. Sohan Gope late janak gope R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
13. Bhaiya Basawan Late janak gope R/o Village Naya Tola Saguna PO



- Danapur PS Danapur Cantt. District Patna
14. Chanarik rai late kuldeep gope R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 15. Basanti Devi W/o America Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 16. Sunil Kumar S/O late America Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 17. Guddu Kumar S/o Late America Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 18. Jawahar Rai S/o Late Kuldeep Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 19. Shiv Kumar Rai S/o Late Kuldeep Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 20. Lalita Rai S/o Late Kuldeep Rai R/o Village Naya Tola Saguna PO Danapur PS Danapur Cantt. District Patna
 21. Rajeev Kumar S/o Late Gulabchan Saraf R/o Bhagwan Janki Bhawan,Bihari Sao lane Muradpur, P.O Bankipore,P.S Pirbahore, District Patna
 22. Shankar Prasad S/o Late Yadunandan Rout R/o village Usari P.S Baikunthpur Dist Gopalganj
 23. Arjun Prasad S/o Late yadunandan Rout R/o village Usari PS Baikunthpur District Gopalganj
 24. Gharbharni Devi W/o Sheo Pujan Yadav P.S Gopalganj at Present Machhua Toli Danapur P.O Danapur,P.S Danapur
 25. Jay Prakash Singh S/O Sardanand Singh R/o Kanouji kachhuara,PS Gourichak District Patna
 26. Sharda Devi W/o Sheo Janam Mahto R/o Boring Road Patna
 27. Sanjay Singh S/O D.N. Singh R/o B3/24,Rajbanshinagar,Patna
 28. Ajay Singh S/O D.N.Singh R/o B3/24,Rajbanshinagar,Patna
 29. Asha Kumari W/o D.N.Singh R/o B3/24,Rajbanshinagar,Patna
 30. vijay narayan Singh S/O Late Ram Lakhan Singh R/O Daud Bigha P.S KUmhrar Patna
 31. Sunil Kumar S/o Late lalpati Rai R/o Gola Par, Danapur P.S Danapur Dist Patna
 32. Mahesh kumar S/O Basudeo Rai R/o Village Bishunpura,P.S Madhopur
 33. Sanjeev Kumar S/o Gulabchand saraf R/o Bhagwan Shankar Bhawan Bihari Sao Lane Muradpur,P.O Bankipore P.S Pirbahore,



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uma Kant Tiwary, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-07-2023

The Registry has noted a defect of the instant LPA not been maintainable for reason of it arising out of a civil review against an order in first appeal. The learned counsel for the appellants relied on a decision of the Hon'ble Supreme Court specifically relating to the maintainability of Letters Patent Appeal under Clause 10, as provided in Appendix E of the Rules of the High Court at Patna, 1916. Therein, the issue was with respect to the maintainability of an appeal from the order passed by a learned Single Judge of the Patna High Court in a first appeal against the order of the Tribunal under Section 140 of the Motor Vehicles Act, 1988, as it then stood. It was held so in Paragraph 8 of the decision in *Chandra Kanta Sinha v. Oriental Insurance Co. Ltd. and Ors; (2001) 6 SCC 158*, which



is extracted hereunder;

8. It can thus be seen that for purposes of appeal, under this clause, judgments of one Judge of the High Court of Patna are classified in two groups. In the first group fall judgments from which appeal will lie to the said High Court. From this group two categories of judgments of one Judge of the High Court are excluded (i) a judgment passed in exercise of the appellate jurisdiction in respect of a decree or order made in exercise of the appellate jurisdiction by a court subject to the superintendence of the said High Court, that is, where a judgment is passed by a Judge of the High Court in second appeal, no letters patent appeal lies in the said High Court; and (ii) from an order or judgment made in exercise of the revisional jurisdiction. The second group takes in judgments of one Judge passed in second appeal where the Judge who passed the judgment declares that the case is a fit one for appeal. But now Section 100-A of the Code of Civil Procedure bars an appeal under the Letters Patent from the judgment of one Judge of a High Court passed in second appeal even with the leave of the Judge who passed the judgment.

2. Hence, the exclusion is with respect to an appeal from a decree or order in a second appeal and from an order or judgment made in exercise of the revisional jurisdiction. In fact, it was held that though Clause 10 provides for an appeal, even



against an order passed in a second appeal, if the Judge who passed the judgment declares the case to be a fit one for appeal; it cannot be maintained since section 100A of Code of Civil Procedure, 1908 (for brevity “CPC”) bars an appeal from a judgment in a second appeal by a learned Single Judge.

3. Similarly, the decision in *New Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation and Ors; 1997 3 SCC 462* was dealt with and it was held that the same was not applicable on the facts in *Chandra Kanta Sinha (supra)* which was an appeal under the Motor Vehicles Act, 1988.

4. We extract Paragraph 13 which dealt with *New Kenilworth Hotel (P) Ltd;*

13. *In New Kenilworth Hotel (P) Ltd. case [(1997) 3 SCC 462] aggrieved by the order of the trial court passed under Order 39 Rules (1) and (2), an appeal under Section 104(1) CPC read with Order 43 Rule 1(r) was filed before the High Court which was disposed of by one Judge of the High Court. From the order/judgment of one Judge, a letters patent appeal (second appeal) was filed before the Division Bench under clause 10 of the Letters Patent of the Orissa High Court. The Division Bench of the High Court held that the letters patent appeal was not maintainable. Having regard to the provision of Section 104(2), the appeal before the Division Bench was barred. On appeal to this Court it was held: (SCC p. 466, para 10)*



“As held earlier, the right of appeal is a creature of the statute and the statute having expressly prohibited the filing of second appeal under sub-section (2) of Section 104, the right of appeal provided under clause 10 of the Letters Patent would not be available.”

Therefore, reliance on the judgment of this Court in New Kenilworth Hotel (P) Ltd. case [(1997) 3 SCC 462] will be of no avail to the respondents.

5. It has to be stated that the aforesaid judgment squarely applies in the present case. In the present case, the order under challenge is in a review filed from an order in a first appeal. The first appeal was filed under Section 104 of the CPC. Section 104(2) provides that ‘No appeal shall lie from any order passed in appeal under this Section’. As has been held by the Hon’ble Supreme Court ‘appeal is a creature of the statute’. Under the Motor Vehicles Act, 1988, as it stands now, Section 173 provides for an appeal from an award of the Claims Tribunal to the High Court and since there is no bar in so far as an appeal from the learned Single Judge to the Division Bench, Clause 10 of the Letters Patent Appeal of the Patna High Court permits such an LPA, which is the declaration in **Chandra Kanta Sinha** (*supra*). In so far as an appeal under section 104; in which appeal the present order has been passed, the further appeal would be hit by the prohibition in section 104(2) of the



CPC.

6. We find no reason to entertain the appeal and uphold the objection raised by the Registry. The appeal stands rejected *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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