

2023 LiveLaw (SC) 63

IN THE SUPREME COURT OF INDIA

A.S. BOPANNA; J., HIMA KOHLI; J.

Special Leave to Appeal (C) No(s). 19038/2022; 24-01-2023

SANJIV KUMAR SINGH *versus* THE STATE OF BIHAR & ORS.

Code of Civil Procedure, 1908; Order 41 Rule 5 - Unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay.

Summary: - Writ petition seeking a direction to the District Magistrate to grant 'No Objection Certificate' (NOC) for starting MS/HSD retail outlet dealership over land in view of a decree passed in his favour - High Court dismissed the WP on the ground that as against the decree passed in favour of the petitioner, an appeal has been filed before the High Court and the same is yet to come up for hearing - Allowing the SLP, the Supreme Court observed : Unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay. If that be so, the judgment and decree would enure to the benefit of the petitioner as on today and the rejection of the NOC only on the ground that the appeal has been filed, would not be justified.

(Arising out of impugned final judgment and order dated 18-08-2022 in CWJC No. 11593/2022 passed by the High Court of Judicature at Patna)

For Petitioner(s) Mr. Dhruv Mehta, Sr. Adv., Mr. Birendra Kumar Mishra, AOR Mr. Manish Shrivastav, Adv., Ms. Poonam A, Adv., Mr. Sirajuddin, Adv.

For Respondent(s) Mr. Azmat Hayat Amanullah, AOR Mr. T. G. Shahi, Adv.

ORDER

Heard the learned senior counsel for the petitioner as also the learned counsel for the respondents and perused the petition papers.

The petitioner is assailing the order dated 18.08.2022 passed by the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 11593 of 2022.

In a matter where the petitioner was before the High Court seeking a direction to the respondent no.2/ District Magistrate, East-Champaran, Motihari, Bihar to grant 'No Objection Certificate' (NOC) for starting MS/HSD retail outlet dealership over land situated in Khata No.544, Plot No.1077, Thana No. 196, Tauzi No. 951, Ward No.37 in Mauza Chhota Bariyarpur, Police Station Chhatauni, Motihar, District-East Champaran, Bihar, the District Magistrate had rejected the request of the petitioner for issue of NOC. The said order being assailed before the High Court, the High Court has also dismissed the petition only on the ground that the respondents herein had contended that as against the decree passed in favour of the petitioner in respect of the said judgment and decree dated 25.08.2021, an appeal has been filed before the High Court and the same is yet to come up for hearing. From the documents produced along with the counter affidavit, the respondents have produced the extract of the present case status of FA-16/2022. It is pointed out that the appeal is filed on 11.03.2022 which was registered on 15.03.2022 and the scrutiny for posting the appeal before the Court is yet to be completed.

Though, such contention is put forth by the respondents, keeping in view the provisions as contained in Order 41 Rule 5 of CPC, unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay. If

that be so, the judgment and decree dated 25.08.2021 would enure to the benefit of the petitioner as on today and the rejection of the NOC only on the ground that the appeal has been filed, would not be justified. In that view, the High Court was also not justified in rejecting the petition.

Accordingly, the Order dated 18.08.2022 passed by the High Court of Patna in Civil Writ Jurisdiction Case No. 11593 of 2022 is set aside. Consequently, the rejection of the NOC by the District Magistrate is held unjustified and the District Magistrate is directed to take note of the decree passed on 25.08.2022 and issue the NOC within a period of two weeks from this day to the petitioner, which shall however, remain subject to the result of the appeal pending before the High Court.

Petition is accordingly disposed of.

Pending application(s), if any, shall stand disposed of.

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