IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.660 of 2022

In

FIRST APPEAL No.2 of 2022

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1. Meera Daruka, wife of Late Prem Kumar Daruka, Resident of Mohalla- Maharajganj Road, P.O.- Aurangabad, P.S.- Aurangabad, and District- Aurangabad.

2. Raghvendra Kumar Daruka, Son of Late Prem Kumar Daruka, Resident of Mohalla- Maharajganj Road, P.O.- Aurangabad, P.S.- Aurangabad, and District- Aurangabad.

3. Manish Kumar Daruka, Son of Late Prem Kumar Daruka, Resident of Mohalla- Maharajganj Road, P.O.- Aurangabad, P.S.- Aurangabad, and District- Aurangabad.

... ... Appellants

Versus

1.1. Pradhuman Bharti Son of Late Dilip Kumr Dalmia and Bharti Dalmiya @ Bharti Devi, Resident of 114, Shivam Apartment, Mohalla - Saidapur Canal Road, Ray Hasanpur Chai Tola, Musallahpur, P.O. - Bankipore, District- Patna, PIN - 800004.

1.2. Kshama Bharti Wife of Sumit Kumar Singhal and D/o Late Dilip Kumr Dalmia and Bharti Dalmiya @ Bharti Devi Resident of House No. - 218, D.N. Das Lane, Mohalla - Langertoli Gali, P.O. - Bankipore, District- Patna, PIN - 800004.

2. Ramesh Rataria S/o Late Shyamsunder Rateria, Resident of Club Road, P.O., P.S. and District- Aurangabad.

3. Dilip Rataria S/o Late Shyamsunder Rateria, Resident of Club Road, P.O., P.S. and District- Aurangabad.

4. Lali Devi, W/o Sri Pashupatinath Kedia and D/o Sri Mahabdir Prasad Daruka, Resident of Marwari Arogya Bhawan, Bariayatu Road, Ranchi (Jharkhand).

5. Kalawati Devi, W/o Dr. B.B. Agrawal and D/o Sri Mahabir Prasad Daruka, Resident of Mohalla- New Area, N.C.C. Office, P.O., P.S. and District- Aurangabad.

6. Chandrawati Khawala W/o Late Ramchandra Khawla and D/o Sri Mahabir Prasad Daruka, Resident of C/o Foboutique, 61/A Parkstreet, Ambassador Building, Kolkata (West Bengal).

7. Pushpa Rani W/o Sri Bajrung Lal Gutgutia and D/o Sri Mahabir Prasad Daruka, Resident of Sri Gobardhan Dairy Farm, New LIC Office, Jhajha, Munger.

8. Nilam Devi wife of Mahabir Prasad Agrawal and D/o Late Mahabir Prasad Daruka, Resident of Mahaveera Enterprieses, New Dak Bunglow Road, Patna.

9. Sunil Choudhary, S/o Late Gaaytir Devi and D/o Late Mahabir Prasad, Resident of P.P. Compund, Ranchi (Jharkhand).

10. Anil Choudhary S/o Late Gayatri Devi and D/o Late Mahabir Prasad Daruka, Resident of P.P. Compound, Ranchi.

11. Rashmi Tebriwal, D/o Late Prem Kumar Daruka, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, District- Aurangabad.

12. Ritima Agrawal D/o Late Prem Daruka, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, P.S. Aurangabad, District- Aurangabad.
13. Rakesh Kumar Pawan son of Ajay Kumar Singh, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, P.S. Aurangabad, District- Aurangabad.
14. Rajesh Kumar Pankaj son of Ajay Kumar Singh, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, P.S. Aurangabad, District- Aurangabad.
15. Smt. Manju Kumari, wife of Rakesh Kumar Paswan, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, P.S. Aurangabad, District- Aurangabad.
16. Smt Anita Devi, wife of Sri Rajesh Kumar Pankaj, Resident of Village- Koima, P.S.- Aurangabad Mufassil, District- Aurangabad, presently residing at Maharajganj Road, New Area, Near J.K. Hotel, P.S. Aurangabad, District- Aurangabad.
17. Mohan Kumar Gupta, son of Late Vijay Kumar Gupta, Resident of Mohalla- Sahuganj, P.S. and District- Aurangabad.
18. Sohan Kumar Gupta, son of Late Vijay Kumar Gupta, Resident of Mohalla- Sahuganj, P.S. and District- Aurangabad.
19. Shiv Pujan Thakur, son of Sri Birghu Thakur, Resident of Karma Bhagwan, P.S.- Aurangabad, District- Aurangabad.

... ... Respondents

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Appearance :

For the Appellants	:	Mr. Nandlal Kumar Singh, Advocate
For the Respondents	:	Mr. J.K. Verma, Advocate Mr. Anjani Kumar, Advocate Mr. Ravi Raj, Advocate Mr. Shreyash Gopal, Advocate Ms. Kumari Shreya, Advocate Mr. Abhishek Anand, Advocate Mr. Achyut Kumar, Advocate Ms. Sweta Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-06-2025

Ref: I.A. No. 02 of 2022

Heard I.A. No. 02 of 2022 for condonation of delay

of about 9 days in filing L.P.A. No.660 of 2022.

2. For the reasons stated in the application read with the affidavit, delay of about 09 days in filing L.P.A. No. 660 of 2022 stands condoned.

3. Accordingly, I.A. No. 02 of 2022 stands allowed.

Ref: I.A. No. 03 of 2025

4. Heard I.A. No. 03 of 2025 for deletion of Annexure- 1 to Annexure - 3.

5. For the reasons stated in the application read with the affidavit, I.A. No. 03 of 2025 stands allowed.

L.P.A. No. 660 of 2022

6. With the consent of the learned counsels for the respective parties, L.P.A. No. 660 of 2022 is taken up for final disposal.

7. The Appellants have assailed the order of the learned Single Judge dated 14.10.2022 passed on I.A. No. 1 of 2022 and I.A. No. 3 of 2022 in First Appeal No. 2 of 2022. In other words, First Appeal No. 2 of 2022 is still pending consideration before the learned Single Judge. The Appellants have assailed the orders on interlocutory stage.

8. Learned counsel for the Respondents Mr. J.K. Verma raised preliminary objection to the extent that the present

L.P.A. No. 660 of 2022 is not maintainable in the light of Section 100-A of Civil Procedure Code. In support of his contention, he has relied on the following four Judgments:

(i) ***Jitendra Narayan Agarwal vs. Sri Rajiv Kumar Agarwal & Anr.,*** **{ (2006 (2) PLJR 530) Paragraph No.4}.**

(ii) ***Balbhadra Singh @ Balbhadra Nr. Singh vs. Ram Binod Singh & Ors.,*** **{(2004(4) PLJR 879) Paragraph nos.4 and 5}.**

(iii) ***Mohd. Saud and Another versus Dr. (Maj.) Shaikh Mahfooz and others.,*** **{(2010 (13) Supreme Court Cases 517), Paragraph Nos.9, 10 and 15}**.

(iv) ***Mohammad Ali vs. Md. Quamru Jamma & Ors.,*** **{(2015(4) PLJR 323) Paragraph Nos.10 and 11}.**

9. Per contra, learned counsel for the Appellants could not apprise this Court with reference to any judicial pronouncement insofar as interpretation of Section 100-A of C.P.C., which was incorporated on 1st July, 2002. On the other hand, it is submitted that Section 100-A of C.P.C. is required to be taken note of with reference to the word used “Judgment or Order”. Restriction is only in respect of final Judgment and Order and not against Interlocutory Order of the learned Single Judge. However, he has not pointed out any judicial

pronouncement on this issue.

10. Heard the learned counsels for the respective parties.

11. Preliminary issue raised in the present *lis* is whether L.P.A. is maintainable against Interlocutory order passed in First Appeal No. 2 of 2022 vide order of the learned Single Judge dated 14.10.2022 passed on I.A. No. 1 of 2022 and I.A. No. 3 of 2022 arising out of First Appeal No. 2 of 2022 or not? It is necessary to reproduce Section 100-A of C.P.C. Section 100-A of C.P.C. is read as under:

> *"[**100-A. No further appeal in certain cases.—** Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge.]"*

Reading of the aforementioned statutory provision, it is crystal clear that there is a bar in filing of L.P.A. against Decree or Order insofar as filing L.P.A. against the order of the learned Single Judge. This has been interpreted by this Court and Hon'ble Supreme Court vide cited decisions (Supra). It is necessary to reproduce aforementioned paragraphs of each of

the Judgments, which are read as under:

(i) Paragraph-4 of the Judgment in the case of ***Jitendra Narayan Agarwal vs. Sri Rajiv Kumar Agarwal & Anr.,*****{ (2006 (2) PLJR 530)}** reads as under:

> *"**4.** Though, the learned Counsel for the appellant has fairly stated that the appeal on merits against the final decision of the learned Single Judge will not be maintainable, but, he has, strenuously, contended that an order passed on an interlocutory application in a pending appeal can be entertained in a Letters Patent Appeal by invocation of Clause 10 of the Letters Patent. This submission militates against the amended provisions of Section 100A as non obstante clause, which, undoubtedly, stipulates that notwithstanding anything contained in any Letters Patent of any High Court no appeal shall lie. If the Letters Patent Appeal does not lie under Clause 10 of the Letters Patent against the decision on merits finally how could there be an appeal against the interlocutory order. This proposition advanced before us is not supportable by law. Therefore, we are unable to subscribe to it and, accordingly, the whole contention advanced in this Letters Patent Appeal with regard to the maintainability in the face of the provision of Section 100A of the C.P.C. is not maintainable."*

(ii) Paragraphs-4 and 5 of the Judgment in the case of ***Balbhadra Singh @ Balbhadra Nr. Singh vs. Ram Binod Singh & Ors,*** **{** ***(2004(4) PLJR 879)*** **}** read as under*:*

> *"**4.** The matter arises out of a probate case, where the appellant was an objector. In the probate case, on 9-12-1975, the Court below expunged the name of the sole applicant Ram Bakshis Singh, who died on 15-7-1975 and substituted his heirs, who claimed to be legatees under the registered Will in question. The objector filed an application for recalling the said order, which was done by the impugned order in appeal before the learned single Judge.*
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> **5.** The appeal was filed under Section 299 of the Indian Succession Act (for short 'the Act'), which runs as follows:—
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> *"299. Appeals from orders of District Judge- Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals."*

(iii) Paragraphs-9, 10 and 15 of the Judgment in the case of ***Mohd. Saud and Another versus Dr. (Maj.) Shaikh Mahfooz and others.*, { (2010 (13) Supreme Court Cases 517)}** read as under.

> *"**9.** The validity of Section 100-A CPC has been upheld by the decision of this Court in Salem Advocate Bar Assn. v. Union of India. The Full Benches of the Andhra Pradesh High Court vide Gandla Pannala Bhulaxmi v. A.P. SRTC, the Madhya Pradesh High Court in Laxminarayan v. Shivlal Gujar*

and of the Kerala High Court in Kesava Pillai Sreedharan Pillai v. State of Kerala have held that after the amendment of Section 100-A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of a learned Single Judge of the High Court passed in an appeal. We respectfully agree with the aforesaid decisions.

10. *In Kamla Devi v. Kushal Kanwar this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable. In the present case the LPAs were filed after 2002 and hence in our opinion they are not maintainable.*

15. *To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of the object of Section 100-A, that is, to curtail the number of appeals."*

(iv) Paragraphs-10 and 11 of the Judgment in the case of ***Mohammad Ali vs. Md. Quamru Jamma & Ors.,***

{ (2015(4) PLJR 323)} read as under:

> "10**.** *From a bare reading of the provisions, embodied in Section 100-A, as the same stood before its amendment, made by the Code of Civil Procedure (Amendment) Act, 2002, it becomes clear that according to unamended Section 100-A, no further appeal was maintainable from an order made by a single Judge of a High Court in any appeal arising out of an appellate decree or order; whereas under the amended Section 100-A (as the same stands with effect from 01.07.2002), no appeal from an original or appellate decree or order, if heard and decided by a single Judge of a High Court, would lie even if there is any provisions to the contrary in any Letter Patent of any High Court.*
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> "***11.*** *In the light of what have been pointed out above, it is apparent that as the order, dated 30.04.2014, was passed by a learned single Judge of this Court in an appeal against an original order, no further appeal is maintainable inasmuch as Section 100-A makes it clear, on its amendment by Code of Civil Procedure (Amendment) Act, 2002, that no further appeal from an original or appellate order lies under the amended Section 100-A, even though the Letters Patent of a High Court makes such an appeal maintainable."*

12. In the light of law laid down by the Co-ordinate Bench and Hon'ble Supreme Court, it is crystal clear that against Interlocutory order or Judgment or Decree, Letters

Patent Appeal arising out of the learned Single Judge order in First Appeal is not maintainable.

13. In view of these facts and circumstances, Appellants have not made out a case so as to interfere with the learned Single interlocutory order dated 14.10.2022 passed on I.A. No. 1 of 2022 and I.A. No. 3 of 2022 arising out of First Appeal No. 2 of 2022.

14. Accordingly, the present L.P.A. No. 660 of 2022 stands dismissed for want of L.P.A. jurisdiction.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Manish/-P.S

AFR/NAFR	**A.F.R.**
CAV DATE	NA
Uploading Date	30.06.2025
Transmission Date	NA