

Ä) IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3579-3580 OF 2011
(arising out of SLP (Civil) Nos. 20406-20407 of 2010)

SHAKTI MODERN RICE MILL & ORS.

.....APPELLANTS

VERSUS

BIHAR STATE FINANCE CORPORATION & ORS.

.....RESPONDENTS

O R D E R

Delay condoned.

Leave granted.

Heard Mr. S.B. Sanyal, learned senior advocate appearing for the appellants, and Mr. M.P. Jha, learned counsel appearing on behalf of respondent No.1 - Bihar State Finance Corporation.

The Subordinate Judge, Aurangabad (Bihar) directed the plaintiffs-appellants to withdraw the plaint and submit it before the Tribunal, constituted under the State Financial Institution Act, 1993 even though in the preceding sentence the learned Judge had arrived at the finding that the jurisdiction of the Civil Court was not barred and the suit was, therefore, maintainable before a Civil Court.

The learned Judge, in the operative portion of the order dated July 23, 2004, observed and made the following direction:

"...It is true that the jurisdiction of civil court is not barred in this case and it is also one of the Forum but in my opinion the plaintiffs should approach the Managing Director or before the tribunal. In the circumstances, let the petition filed by the defendant is allowed. The plaintiff is directed to withdraw the plaint to be produced before the Tribunal constituted under the Act. (illegible)."

.....2/-

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The above-quoted passage is self-contradictory. Having come to hold, and rightly so, that the jurisdiction of the civil court was not barred and the suit was perfectly maintainable before the civil court, it was not open to the Subordinate Judge to direct the plaintiff to withdraw the plaint to be presented before any other forum.

In appeal, the High Court was equally in error in not appreciating the illegality committed by the Subordinate Judge and in dismissing the appeal relying upon some observation made by the High Court in an earlier writ petition filed by the plaintiffs-appellants.

We, accordingly, allow the civil appeals, set aside the orders dated February 07, 2008 and February 19, 2010 passed by the High Court in MA No 297/2004 and C.Rev. No. 2 of 2009 respectively and the order of the Subordinate Judge dated July 23, 2004 passed in TS No. 207/134/03, and direct for restoration of the plaint. The civil suit shall now proceed with the suit in accordance with law.

We make it clear that we are not making any comments on the merits of the appellants' claim that will be decided by the court below on its own merit and in accordance with law.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

NEW DELHI,
APRIL 18, 2011.
ITEM NO.42

COURT NO.12 SECTION XVI
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).20406-20407/2010

(From the judgement and order dated 07/02/2008 and 19/02/2010
respectively passed in MA No. 297/2004 and CR No. 2/2009 of the
HIGH COURT OF PATNA)

SHAKTI MODERN RICE MILL & ORS.

Petitioner(s)

VERSUS

BIHAR STATE FINANCIAL CORP.& ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP, prayer for interim relief and
office report)

Date: 18/04/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

Mr. S.B. Sanyal, Sr. Adv.
Mr. Akhilesh Kumar Pandey, Adv.
Mrs. Shalini Chandra, Adv.
Mr. Sudhanshu Sharan, Adv.
Ms. Swati Chandra, Adv.

For Respondent(s)

Mr. M.P. Jha, Adv.
Mr. Ram Ekbal Roy, Adv.
Mr. Harshvardhan Jha, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.
Leave granted.
The civil appeals are allowed.

(N.S.K. Kamesh)
Court Master

(S.S.R. Krishna)
Court Master

(signed order is placed on the file)