IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.35 OF 2005
ALONG WITH
CIVIL APPLICATION NO. 1407 OF 2006
IN
LETTERS PATENT APPEAL STAMP NO. 20447 OF 2005

Mohd. Riyazur Rehman Siddiqui)
S/o Mohd. Abdur Rehman Siddiqui)
Age 50 years, Occ.: Service with .)
resident of Nobel Colony, Udgir)
District Latur now at Murum, Tal.: Omerga)
District Osmanabad).. Appellant
(Org. Claimant)

Versus

Deputy Director of Health Services)
through the District Health Officer)
Zilla Parishad, Latur, Tal. & District Latur).. Respondent
(Resp.No.1)

Mr M M Patil, Advocate holding for Mr M B Sabnis for
the Appellant.
Mr N B Khandare, Government Pleader, for State.
Mr P R Tandale, Advocate for Respondent.

WITH
CIVIL APPLICATION NO. 1407 OF 2006
IN
LETTERS PATENT APPEAL STAMP NO. 20447 OF 2005

1) Sonabai w/o Deorao Takale)
Age 54 years, Occ.: Household)

2) Sunita w/o Kalyan Takale)
Age 32 years, Occ.: Agriculture)

3) Appasaheb s/o Kalyan Takale)
Age 16 years, Occ.: Student)

4) Bharat s/o Kalyan Takale)
Age 14 years, Occ.: Student)

Both u/g of their mother- Appellant No.2)
All r/o Rohilgad, Tq.: Ambad,Dist.: Jalna).. APPLICANTS
(Org. Claimants)

Versus

1) Baban alias Punjaji s/o Tulsiram Jawale)
Age 28 years, Occu.: Driver)
R/o Chandanzira, Jalna)
(Deleted as per Order dated 13/8/07))

2) Akram Khan s/o Ahsaan Khan Kaisar)
Age 45 years, Occu: Business)
R/o Kaisar Colony, Aurangabad)

3) Managar, United India Insurance Company)
R.P. Road, Jalna.).. RESPONDENTS
(Org.Respondents)

None present for the Applicants.
Respondent No.1 deleted.
Respondent No.2 served.
Mr R F Totla, Advocate for Respondent No.3.

CORAM : SWATANTER KUMAR, C.J.,
P.V. HARDAS & N.D. DESHPANDE, JJ

JUDGMENT RESERVED ON : 26TH AUGUST 2008
JUDGMENT PRONOUNCED ON : 25TH SEPTEMBER 2008

JUDGMENT (Per Swatanter Kumar, C.J.)

RELEVANT FACTS:

Mohd. Riyazur Rehman Siddiqui met with an accident on 30th September 1986 on Bidar-Udgir road while he was driving a motor-cycle No. MZV-6233. According to him, while he was driving the vehicle at a very moderate speed, the driver of jeep bearing No. MZV-6437 who was driving the vehicle rashly and negligently gave a dash to the motor-cycle and resultantly he sustained injuries. A case under Sections 279, 337 and 338 of the Indian Penal Code was registered with the Police Station, Udgir. The Appellant resultantly of the accident sustained permanent disability to the extent of 48%. He filed a Petition under Section 166 of the Motor Vehicles Act, 1988 being Case No. 26 of 1987 before the Motor Accident Claims

Tribunal, Latur, which was contested and decided finally by the Tribunal vide its judgment and award dated 5th May 1989 awarding compensation of Rs.51,000/- only with interest at the rate of 10% per annum from the date of the claim petition. This judgment of the Tribunal was impugned by the Claimant by filing First Appeal No.638 of 1989 before this Court praying for enhancement of the compensation awarded. The owner-driver of the jeep died on 16th July, 1987 during the pendency of the Claim Petition before the Tribunal. The Insurance Company had denied its liability and the present Appeal was only preferred against the Respondent No.1-owner of the vehicle. The Deputy Director of Health Services-original Respondent No.1, being owner of the jeep also preferred Appeal being First Appeal No. 637 of 1989 impugning the judgment of the Tribunal. First Appeal No.637 of 1989 was dismissed by a learned Single Judge of this Court vide common judgment dated 12th February 2004. The Appeal filed by the Claimant (First Appeal No.638 of 1989) was partly allowed and the compensation was enhanced to Rs.56,000/- with interest at the rate of 9% per annum. Dissatisfied from the judgment of the learned Single Judge, the Claimant filed Letters Patent Appeal No. 35 of 2005 praying for further enhancement.

2. Civil Application No. 1407 of 2006 has been filed in Letters Patent Appeal (Stamp) No. 20447 of 2006 for condonation of delay of 212 days caused in filing Letters Patent Appeal against judgment of the learned Single Judge in First Appeal No. 129 of 1998.

There was no serious objection on behalf of the learned Counsel appearing for the Respondents for condonation of delay in filing the present Appeal. We have perused the Application. Since sufficient cause for condonation of delay is shown, the Civil Application is allowed. The delay of 212 days in filing the present appeal is condoned. The Civil Application is accordingly disposed of. Registry to register and number the Letters Patent Appeal accordingly.

3. First Appeal No. 129 of 1998 was filed challenging judgment and award of the Motor Accident Claims Tribunal, Jalna. The Claimants therein are the dependents of deceased Kalyan Takale, aged 28 years, who died on 16th April 1995 due to injuries sustained in an accident arising out of use of motor vehicle which occurred on 15th April 1995. The accident

occurred when motor-cycle No.MH-21 driven by the deceased was dashed by Taxi No. MH-20-A-7090 driven by Respondent No.1 in a rash or negligent manner. The taxi was owned by Respondent No.2 and was insured with Respondent No.3. The Motor Accident Claims Tribunal, Jalna by Judgment and Award dated 4th April 1997 directed Respondent Nos.1 to 3 to pay amount of Rs.1,50,000/- (inclusive of no fault liability) to Claimants with interest at the rate of 12% per annum. The Judgment/Award of the Tribunal was challenged in First Appeal No. 129 of 1998 in which the learned Single Judge by Judgment and Award dated 25th January 2005 modified the Award by substituting figure of Rs.2,00,000/- (Two lakhs) in place of Rs.1,00,000/- (One lakh). This Judgment/Award of the learned Single Judge is challenged by filing Letters Patent Appeal (Stamp) No. 20447 of 2005 by Claimants seeking further enhancement in the amount of compensation.

ORDER OF REFERENCE:

4. When the matter came up for hearing before a Division Bench of this Court on 22nd February 2008, the learned Counsel appearing for the

respective parties relied upon different judgments of this Court as well as of the Supreme Court to argue for and against the very maintainability of the Letters Patent Appeal in view of the provisions of Sections 100A of the Code of Civil Procedure, 1908, Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") Clause 15 of the Letters Patent. The Division Bench of this Court noticed the view expressed by another Division Bench of this Court in the case of *Asha d/o Bhalchandra Joshi vs National Insurance Co. Ltd.*, **2008 (1) Mh.L.J. 724,** and the view of the other Benches and noticing the difference of opinion expressed in different judgments, directed the matter to be referred to a larger Bench for settling the legal issue involved in the present case with regard to the maintainability of the Letters Patent Appeal.

5. It will be useful to refer to the Order of Reference dated 22nd February 2008 which reads as under:-

> "1. The learned counsel, appearing for the appellant, stated that Full Bench Judgment of this High Court in the case of "**Laxminarayan vs. Shivlal Gujar, 2003 (1) MPLJ (FB) 10 = AIR 2003 MP 49 (FB)"** was considered by a Division Bench of this Court in the case of

"**Asha d/o Bhalchandra Joshi vs. National Insurance Company Ltd., 2008 (1) Mh. L.J. 724"** and in paragraph No. 28 of the said judgment, while declining to adjudicate upon the effect of Section 100-A of the Code of Civil Procedure on maintainability of the letters patent appeal, arising from the award of the Tribunal, it was held that the appeal is maintainable.

2. On the other hand, learned counsel, appearing for the respondent, contended that besides the fact that the Full Bench's conclusions or dictums could not have been varied or dilated by the Division Bench and also the fact that the Supreme Court in the case of "**Kamal Kumar Dutta & another vs. Ruby General Hospital Ltd., & others, 2008 AIR SCW 4594"**, has held that such an appeal is not maintainable, the Supreme Court had overruled the view of the Bombay High Court taken in **AIR 2004 Bombay 38**.

3. In view of above mentioned circumstances, we feel it appropriate and the principles of judicial propriety demand that this matter is placed before the Full Bench. Accordingly, this matter be placed before the Full Bench. The Registry shall communicate the date fixed for hearing of the matter before the Full Bench to the parties."

QUESTIONS OF LAW FORMULATED:

6. In order to appropriately deal with the different questions which require consideration of the Court, it will be desirable to

formulate the questions which are likely to arise repeatedly before the Court and even otherwise are questions of law of some significance as under :-

(a) Whether, upon amendment to Section 100A of the Code of Civil Procedure, 1908 (with effect from 1st July, 2002), the Letters Patent Appeal against the judgment rendered by the learned Single Judge of High Court would be maintainable ?

(b) Whether an appeal arising out of special statute like Motor Vehicles Act, 1988 (even if assuming that it is a special statute) would be maintainable under Clause 15 of the Letter Patent against the judgment passed by the learned Single Judge of this Court in exercise of its appellate jurisdiction ?

RELEVANT PROVISIONS OF LAW AND THEIR IMPACT ON THE

LEGAL ISSUES FORMULATED.

7. The language of Section 4 of the Code of Civil Procedure is specific but still of wide connotation and impact. It contemplates that in absence of any specific provision to the contrary nothing in the Code shall be deemed to limit or otherwise affect any special or local law, special judicial jurisdiction or power conferred or any special form of procedure prescribed under any other law. This Section, upon its plain construction, indicates the purpose for incorporating such a provision. The Code of Civil procedure being a Code to control and regulate the proceedings before the Courts under various remedies and enforcing law makes a clear exception in regard to operation and effect of a specific provision contained in any other law unless some provision of Code specifically excludes an application of that other provision. General Rule is that wherever a special provision renders the general provision incapable to apply to a remedy, then the provisions of the Code will not limit or affect such special provision.

8. An appeal to be filed under a decree or order passed by

the Court of competent jurisdiction in exercise of its original or appellate jurisdiction is again controlled by the specific provision of the Code. Under Section 96 of the Code, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court. An appeal from the appellate decree is permissible under the provision of Section 100 of the Code of Civil Procedure, where it is stated that an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves substantial questions of law. In terms of Section 101 of the Code, no appeal is provided from an appellate decree which is passed by the High Court itself. Under Section 102 of the Code which was also amended by the Code of Civil Procedure Amendment Act, 2002 with effect from 1st July, 2002, no second appeal would be maintainable from any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-. By this very amendment Act, Section 100A was amended which opens with non obstante clause and which takes

within its sweep even the provisions of Letters patent of any High Court. Not only that it even renders any instrument having the force of law or any other law for the time being in force ineffective. Thus, the provision of Section 100A is an exception to the appeals provided under other statutes and it in no uncertain terms mandates that where any appeal from the original or appellate decree or order is heard and decided by the learned Single Judge of the High Court, no further appeal shall lie from such judgment and decree.

9. Section 104 in no uncertain terms provides that an appeal shall lie from the orders stated in that Section and save as otherwise provided in the body of this Code or by any law for the time being in force and from no other orders. This process of first and second appeals specified under the Code is further regulated and controlled by the provisions of Orders XLI, XLII and XLIII, respectively, of the Code of Civil Procedure. They provide as to how and in what manner appeal from an appellate decree or order is maintainable and would be decided and also the procedure to be adopted by the Court while

deciding such appeals including the power of the Court under those provisions.

10. It will be appropriate to examine the legislative amendment to the Code of Civil Procedure. The Code of Civil Procedure, 1882 was replaced by Code of 1908. However, Section 100A was introduced for the first time by amending Act 104 of 1976. The intent was to bar third appeal before a Division Bench of the High Court from a judgment of the Single Judge deciding a matter in a Second Appeal. By the amending Act of 1999, the earlier Section 100A was substituted. Section 100A as introduced by amending Act 46 of 1999, though attained the assent of the President on 30th December 1999, it was not enforced because of various factors. Clause (b) of Section 100A was subsequently deleted finally and as already noticed, by the amending Act of 2002, present Section 100A was introduced. Present Section 100A reads as under :-

> "**Section 100A**. Notwithstanding anything contained in any Letters Patent for any High Court or in any other

> 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."

11. The design behind frequent amendments of these provisions is obvious. Legislative attempt has been to reduce the number of Appeals which a litigant could prefer against an original or appellate decree. Where the Single Judge hears an appeal from an appellate decree or order, the question of there being a further appeal would not arise as it is not so contemplated. Where the regular First Appeal is heard by a Division Bench, the question of there being an intra Court appeal does not arise. It is only in cases where the value is not substantial that the Rules of the High Court may provide for the regular First Appeal to be heard by a learned Single Judge and in such a case to give further right of appeal may not be convenient as it may amount to over-loading the judicial work. Since the Appeal is creation of the statute, no prejudice would be caused to the litigant by not providing intra Court appeal even where the value involved is

large. Newly incorporated Section 100A in clear and specific terms prohibits further appeal against the judgment and decree or an order of a learned Single Judge to a Division Bench.

12. It is thus obvious that the provisions of Section 100A curtailed the right of intra-Court appeal available to a litigant where the Single Judge of the High Court was deciding a matter in exercise of its appellate jurisdiction. The object and reasons for introduction of Section 100A is another aspect which can be examined by the Court. The Malimath Committee had examined the issue of further appeal and recommended suitable amendments to then existing Section 100A so as to bar further Appeal.

13. In the case of *Salem Advocate Bar Association, Tamil Naidu vs Union of India*, **AIR 2003 SC 189**, the Supreme Court while examining the constitutional validity of the amending Act held that the provisions of Section 100A were not unreasonable and did not place any unjustifiable restriction by removing the right to file intra-court

appeal and held as under :-

> "15. Section 100-A deals with two types of cases which are decided by a single Judge. One is where the single Judge hears an appeal from an appellate decree or order. The question of there being any further appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial Court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-Court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a single Judge. In such a case to give a further right of appeal where the amount involved is nominal to a Division Bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-Court appeal, even where the value involved is large. In such a case, the High Court by Rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100-A."

14. Of course, the application of Section 100A is stated to be

prospective and would not affect the right and remedies of an Appellant who had filed the Appeal prior to 1st July 2002. In other words, accrued right of appeal vested in a suitor was not affected. This view was also taken by a Full Bench of the Punjab & Haryana High Court in the case of *Parashottam Dass vs State of Haryana*, AIR 2003 P&H 301. The Full Bench of this Court in the case of *Rahul Sharad vs* Ratnakar, **2004 (3) Mh. L.J.** 706, took the same view which is approved by the Apex Court in *Bento De Souza Egipsy vs Yvette Alvares Colaco*, **(2004) 13 SCC** 438. The Supreme Court in a more recent case of *Kamla Devi vs Kushal Kanwar and another*, **(2006) 13 SCC 295** referring to *Bento De Souza* (supra) and *Sanjay Z Rane vs Saibai S Dubaxi*, **(2004) 13 SCC 439** wherein it is opined that Section 100A of the Code has no retrospective effect observed that the Letters Patent Appeal filed prior to coming into force of the 2002 Act would be maintainable.

15. The right of Appeal is a substantive right. The vested right of appeal can be taken away only by a subsequent enactment if so

provided expressly or by necessary intendment and not otherwise.

16. The Supreme Court in the case of *Garikapati Veeraya vs N Subbiah Choudhry,* **AIR 1957 SC 540**, spelt out the five propositions as precepts to right of appeal. The formulated propositions read as under :-

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit

or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

17. Once the Legislature has decided to take away the right of Second Appeal the intra-Court appeals are impermissible specifically in face of the fact that constitutional validity of Section 100A has been upheld. The scope of Section 100A is so wide that it would take into its sweep not only other laws but even the Letters Patent of a High Court. The intention of the Legislature in taking away of right of appeal by abolishing an intra-Court appeal to a Bench of two Judges of the very High Court against a decision rendered by a Single Judge, is in no way prejudicial to the protected right of appeal of a litigant. The Scheme of Section 100A thus indicates that intra-Court appeal from an appellate jurisdiction of a Single Judge of the High Court is not permissible.

18. The Motor Vehicle Act, 1988 is considered and was enacted as social welfare legislation to provide adequate compensation to the people who sustained bodily injuries or to dependents of persons who are killed in vehicular accident expeditiously. This Act has been considered even as a self-contained Code as it provides methodology to be adopted for institution of claim petition, powers of the Tribunal and passing of an award and how such an award would be executed. The Tribunal is established for adjudicating such claims by a State Notification issued under the provisions of Section 165 of the Act. On receipt of an application for compensation claimed under Section 166 of the Act, the Claims Tribunal is expected to issue notice/afford an opportunity of being heard to parties, hold inquiry into the claim and then to make an award determining the amount of compensation payable to the claimants. The Tribunal determines all questions of law and fact while arriving at a conclusion. The jurisdiction of the Tribunal does not limit to determine compensation but even as to the party/parties liable to pay compensation and its extent.

19. While holding an inquiry as contemplated under Section 168 of the Act, the Claims Tribunal has to follow summary procedure as the Tribunal thinks fit, subject to the rules made in this behalf. However, it has all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed. Further the Claims Tribunal shall be deemed to be a civil court for all purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Section 175 mandates that where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. The State Government is competent to frame rules for the purposes of carrying into effect the provisions of Sections 165 to 174 of the Act and it can frame rules which may provide for the matters indicated in that section and in particular, the procedure to be followed by a Claims

Tribunal in holding an inquiry under the said Chapter XXVI and in terms of Section 176(c) of the Act, the powers vested in a civil court which may be exercised by a Claims Tribunal.

20. In exercise of its power vested in it under Section 176, the State of Maharashtra has framed rules known as “Maharashtra Motor Vehicles Rules, 1989” and Rules 275 and 276 thereof deal with the powers of a civil court which may be exercised by Claims Tribunal and the procedure to be followed by a Claims Tribunal in holding inquiries respectively. The Tribunal is fully empowered to exercise powers vested in a civil court in relation to the procedural matters and is vested with wide powers including Sections 151, 152 and 153 of the Code. Some of the other provisions of the Code of Criminal Procedure are also applicable to the proceedings before the Tribunal. Some of the provisions of the Code of Civil Procedure i.e. Orders V, VI, VII, IX, XI, XII, XIII, XIV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXII, XXXVII AND XXXIX are also applicable to the proceedings before the Tribunal. These

provisions clearly indicate that the Tribunal has all trapping of a civil court may be in stricto senso it is not a court within the meaning of the provisions of Code of Civil Procedure. The provisions of the Code of Civil Procedure by and large are applicable in all matters to the proceedings before the Tribunal. The Tribunal in exercise of its power is obliged to determine all issues in controversy of fact and law in accordance with the provisions of the Code of Civil Procedure. As already noticed, even the provisions relating to amendment of pleadings additional evidence, service of summons and proceedings by an indigent person, all are applicable to the Tribunal.

21. As early as in 1950s, the Supreme Court in the case of *The Bharat Bank Limited, Delhi v. The Employees of the Bharat Bank Limited, Delhi, and the Bharat Bank Employee's Union, Delhi*, reported in **AIR 1950 SC 184,** enunciated the principle that an industrial tribunal performs all duties and functions of a court. The provisions of that Act also shows that the Tribunal is discharging functions very near to those of a court, although it is not a court in the technical

sense of the word.

22. In the case of *Jaswant Sugar Mills Ltd. Meerut v. Lakshmi Chand & Ors.,* reported in **AIR 1963 SC 677,** the Court while considering the essential characteristics of judicial adjudication by process of determination culminating in the judicial decision observed that a judicial decision always postulates the existence of a duty laid upon the authority to act judicially, and to make a decision or an act judicial, following criteria was spelt out,

> "1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
>
> 2) It declares rights or imposes upon parties obligations affecting their civil rights; and
>
> 3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on

findings based upon those questions of law and fact."

23. The Court also stated that in deciding whether the authority required to act judicially when dealing with the matters affecting the rights of citizens may be regarded as a Tribunal, though not a court, the principal incident is the investiture of the "trappings of a court", - such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence, power to pass orders mandatory to enforce obedience to their commands. Some though not necessarily all such trappings will ordinarily, make the authority which is under a duty to act judicially, a `tribunal'.

24. Further in the case of *Associated Cement Companies Ltd. vs P.N. Sharma & Anr.*, reported in **AIR 1965 SC 1595**, it was stated by the Supreme Court that the presence of some of the trappings may assist the determination of the question as to whether the power

exercised by the authority which possesses the said trapping, is the judicial power of the State or not, and the main and the basic test, however, is whether the adjudicating power which is the particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this principle, it was held by the Supreme Court that the Tribunal constituted under the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a Tribunal having the trappings of a court.

25. More so, in the case of *State of Haryana vs Smt. Darshana Devi & Ors.,* reported in **(1979)2 SCC 236**, the Supreme Court, while dealing with a case under the provisions of Motor Vehicles Act, 1939, stated that as under:-

> "The reasoning of the High Court in holding that Order XXXIII will apply to the Tribunals which have the trappings of the civil court finds our approval. We affirm the decision."

26. It is said that all Tribunals are not courts, though all the courts are Tribunals. The word "courts" is used to designate those Tribunals which are set up in an organized State for the Administration of Justice. The Administration of Justice is meant to be the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the courts are there to restore the *vinculum juris,* which is disturbed.

27. In addition to the above general principles, some of the courts have taken a specific view stating the principle that the Tribunal constituted under the M.V. Act is a court subordinate to the High Court in terms of Section 24 of the Code of Civil Procedure, The Karnataka High Court in *Mrs. Noreen R. Srikantaiah v. L. Dasarath Ramaiah, Gulbarga & Anr.,* reported in **AIR 1985 Karnataka 208,** held as under:-

> "8. Then again, the proposition that when the "District Judge" is notified as constituting the Tribunal,

the conferment of the special jurisdiction on the District Judge is by virtue of his presiding over the District Court and not as persona designata and that though the term "District Judge" is used in the notification, the investiture of jurisdiction is in reality in the court of District Judge is eminently arguable. In Balakrishna Udayar v. Vasudeva Ayyar, AIR 1917 PC 71, the Judicial Committee observed:

"It appears to their Lordships to be clear that in all these matters the Civil Court exercises its powers as a Court of Law, not merely as a persona designata whose determinations are not to be treated as judgments of a legal Tribunal....."

9. It is not necessary to refer to the differing views to the High Courts on the point. We have now the pronouncement of the Supreme Court in Bhagwati Devi v. I.S. Goel, 1983 Acc CJ 123 which imparts an altogether new complexion to the problem and puts the point beyond controversy. In this decision, Supreme Court referred to its earlier pronouncement in Darshan Devi's case, AIR 1979 SC 855 which arose out of the decision of the Punjab & Haryana High Court in Smt. Darshana Devi v. Sher Singh, AIR 1978 Punj & Har 265. The question before the High Court in that case was whether a claimant before the Tribunal constituted under S. 110 of the `Act' is entitled to the benefit of O.33 R.1 C.P. C. The Tribunal had, in that case, negatived this claim holding that O.33, C.P. C. was not one of those provisions which had expressly been made applicable by the Punjab Motor Accidents Claims Rules, 1964. In support of its view the Tribunal had relied upon an earlier opinion expressed by Dua, J. that S.110-C of the M.V. Act by no means clothed the

Tribunal with all the characteristics of a Civil Court. But in Darshana Devi's case, (AIR 1978 Punj & Har 265), Koshal, C.J. did not subscribe to the earlier view of Dua, J. but referred, with approval, to a Full Bench judgment of that Court in Shanti Devi v. General Manager, haryana Roadways, Ambala, AIR 1972 Punj & Har 65 (FB), in which, Jain, J. speaking for the Full Bench had said (at p.72):

"The proceedings before the Claims Tribunal closely resemble the proceedings in a Civil Court and to use the language of their Lordships of the Supreme Court in Jugal Kishore's case AIR 1967 SC 1494, the Claims Tribunal for all intents and pruposes discharges the same functions and duties in the same manner as a Court of law is expected to do. In this view of the matter I hold that the proceedings before the Claims Tribunal are not in the nature of arbitration proceedings and that the Claims Tribunal while disposing of the claim acts as a Court."

(Emphasis ours)

Darshana Devi's case, in which the above view of Jain, J. was reiterated, went up to the Supreme Court. Supreme Court observed:

"2. The poor shall not be prised out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of O.XXXIII, C.P. C. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in Art. 14 and stressed in Art.39A of the constitution has sought leave to appeal against the order of the High Court which has rightly extended the `pauper' provisions to auto-accident claims. The reasoning of the high Court

in holding that Order XXXIII will apply to Tribunals which have the trappings of the Civil Court finds our approval. We affirm the decision." (Emphasis ours)

But in Revanappa's case (AIR 1983 Kant 164), Swami, J. did not accept the contention that in Darshana Devi's case, Supreme Court must be understood to have affirmed the view of Jain, J. in Shanti Devi's case (AIR 1972 Pun & Har 65) (FB) on which Koshal, C.J. Had, in turn, placed reliance.

10. However, Bhagwati Devi's case (1983 Acc CJ 123) (SC), now puts the points outside the pale of controversy. The matter arose in the context of the power of the Supreme Court under S.25 to transfer suits and other proceedings, inter alia, from one "Civil Court" in one State to the other "Civil Court" in any other State. There is no distinction in the concept of a Court between S.24 and S.25 C.P. C. However, the requirement of the element of subordination envisaged in S.24 so as to render the power under S.24 exercisable, is, understandably, not in S.25. If, for purposes of S.25 a Motor Accidents Claims Tribunal is a "Civil Court", if follows, a fortiori, that the Tribunal is a "Court", for the purpose of S.24 as well. It is in this context that the pronouncement in Bhagwati Devi's case is instructive on the aspect now under consideration. Supreme Court said:

"In view of the observations of this Court in State of Haryana v. Dharshan Devi, we are of the view that the Motor Accidents Claims Tribunal constituted under the M.V. Act is a Civil Court for the purposes of S.25 of the Civil P.C. We are satisfied that the cases before us are fit cases for being transferred from the file of the

> Motor Accidents Claims Tribunal, Moradabad to the file of the Motor Accidents Claims Tribunal Delhi ....." (Emphasis supplied)
>
> This pronouncement of the Supreme Court should now serve to put the controversy at rest. In view of this pronouncement, the view taken in State of Karnataka v. Subbanna (AIR 1974 Kant 109) and in Revanappa's case (AIR 1983 Kant 164) that such a Tribunal is not a `Court' cannot continue to hold the field."

28. A Bench of this Court in *Gurucharansing Hardayalsing Sethi v. Narhari Laxman Shinde & Ors.,* reported in **1996(4) Bom.C. R. 298** observed that the Motor Accident Claims Tribunal is a persona designata and stated that it is a court subordinate to High Court under Section 115 of the Code of Civil Procedure. The Court observed thus:-

> "Though amongst various High Courts there was difference of opinion as to whether the Motor Accident Claims Tribunal is persona designeta or the Court subordinate to the high Court within the meaning of section 115 C.P. C., but after the Apex Court in (State of Haryana v. Smt. Darshana Devi & Others), A.I. R. 1979 S.C. 855, observed that the Motor Accident Claims Tribunal has the trappings of the Civil Court, the later decisions of various High

> Courts are consistent that the Motor Accident Claims Tribunal, for all intents and purposes, is Court subordinate to the High Court and has trappings of Civil Court and amenable to revisional jurisdiction of the High Court under section 115 C.P. C. I fully agree with the view that Motor Accident Claims Tribunal is not a persona-designeta but a Court subordinate to the High Court under section 115 C.P. C."

29. The Supreme Court in a very recent judgment in the case of *Kamal Kumar Dutta & Anr. v. Ruby General Hospital Ltd. & Ors.,* reported in **2006 AIR SCW 4594**, while dealing with the case under Sections 397 and 398 of the Companies Act also took the view that the Company Law Board has adjudicatory power to decide all questions of law and facts, and held that :-

> "There is no two opinion in the matter that when the CLB exercises its power under Ss.397 & 398, it exercised a quasi-judicial power as the original authority. It may not be a Court but it has all trapping of a Court."

30. A Bench of Rajasthan High Court in the case of *R.S. R.T. C.*

& etc. etc. vs Vaibhav Kumar & Ors., reported in **AIR 2007 Rajasthan 147,** held as under:-

> "23. The legal position exposited by the Supreme Court in Kamal Kumar Dutta, 2006 AIR SCW 4594, applies on all fours to the order /award passed by the Motor Accident claims Tribunal under Section 168 of the Motor Vehicles Act and where such order/award is carried in an appeal under Section 173 of that Act. Even if it be assumed that the Motor Accident Claims Tribunal is not a Court as is the term ordinarily understood, it is beyond doubt that such Tribunal has all the trapping of a Court. Though the Tribunals occupy a special position of their own under the scheme of the Courts and Tribunals and special matters and questions are entrusted to them for their decision yet they share with the Courts one common characteristic viz.; both the Courts as well as Tribunals are constituted by the State and are invested with judicial functions as distinguished from purely administrative or executive functions. It is the State's inherent judicial power which is discharged by the Courts and Tribunals. If the Company Law Board constituted under the Companies Act in its adjudicatory powers has the trappings of a Court and an appeal under Section 10F of the Companies Act from its order to the single Judge is not amenable to further appeal (Letters Patent) to the Division Bench of the same Court because of Section 100A of the Code of Civil Procedure, a fortiori, an order passed by the Single Judge in appeal under Section 173 of the Motor Vehicles Act from the order/award of the Motor Accident Claims Tribunal shall not be subject to intra-

Court appeal in view of the bar created by Section 100A of the Code of Civil Procedure effective from 1st July, 2002." (Emphasis supplied)

31. In the light of the above judgment and consistent view taken by the courts there can hardly be any doubt that the Tribunal does have trappings of a court. It satisfies all the tests stated above. In any case, it has power to summon, record statements on oath, compel attendance of the witnesses, determine controversies by a public adjudicatory process and even has the power to punish the defaulters. It can get its award executed in accordance with the law. Besides all these, it is performing duties and functions of administration of justice under the power of the State and in fact under a statute. At this stage itself, we may notice that the Division Bench of this Court in the case of *Asha d/o Bhalchandra Joshi vs. National Insurance Co. Ltd.,* reported in **2008 (1) Mh. L.J. 724** did not consider the judgment of the Supreme Court in *Kamal Kumar Dutta's* case (supra) and of this Court *in Gurucharansing Hardayalsing Sethi vs Narhari Laxman Shinde and* others, **(1996) 4 Bom. C.R. 298**,

besides it has ignored the basic principles applicable for determination i.e. whether the Tribunal has a trappings of a Court or not. With respect, we are unable to follow the view taken by a Division Bench in that case in this regard.

32. As far as the appeals under the Motor Vehicle Act are concerned, it specifically provides that the award of the Tribunal made under Section 165 of the Act would be appeallable to the High Court under Section 173 of the Act. Section 173 of the Act thus reads as under: -

> "**173. Appeals** : (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :
>
> Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court;
>
> Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days. If it is satisfied that the appellant was prevented by sufficient cause from preferring the

appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees."

33. The bare reading of Section 173 of the Act shows that the provisions are self-contained in all respects. It provides for filing an appeal by any person aggrieved by an award of the Claim Tribunal provided the amount in appeal is not less than Rs.10,000/-. Such appeals are to be filed within 90 days and the appeal would be entertained by the High Court subject to satisfaction of the conditions stipulated under the proviso 1 of Section 173(1) of the Act. In terms of proviso 2 of Section 173(1) of the Act, the High Court can entertain an appeal even after the expiry of 90 days if it has shown sufficient cause for preferring an appeal beyond time. In other words, this provision indicates the scope of powers of the High Court while entertaining an appeal under the said provision. The ambit, scope and the powers thus have been outlined by the Legislature itself and may not be dependent on the provisions of other laws. There is no provision in the entire M.V. Act which provides for further appeal from

the judgment passed by the High Court in exercise of its appellate jurisdiction under Section 173 of the M.V. Act.

34. Once the M.V. Act provides for a remedy of First Appeal and does not specify availability of any further right of appeal, it is obvious that the Legislature does not intend to give any further right of appeal within the provisions of the Act particularly in relation to intra-Court appeal. The right to appeal and in fact all remedial provisions do not emerge from any fundamental or vested right. It is a grant or a statute under which such right of appeal is available. In view of this settled principle, the absence of any provision providing a further appeal in terms of Section 173 of the Act would obviously lead to one inevitable conclusion that the special law (i.e. Motor Vehicle Act) in comparison to general laws (i.e. Code of Civil Procedure) does not contemplate maintainability of a second appeal against the judgment of the learned Single Judge. It may also be noticed that remedy of appeal being a statutory right, cannot be introduced by judicial interpretative process. The Court would be very reluctant to

read into the statute, a right of appeal in absence of any such specific provision.

NATURE OF RIGHT OF APPEAL:

35. According to Salmond, (**Salmond on Jurisprudence, Twelfth Edition)**, the right in the strict sense is duty which is something owed by one to another. Correspondingly, the latter has a right against the former. The expression `right' is capable of being used in wider sense. Thus the rights are concerned with interest, yet right and interest are not identical. Bentham introduced the concept of natural law and natural rights which, according to him, are two kinds of fictions or metaphors which play a greater part in books of legislation that they deserve to be examined by themselves. Of course, this concept has not found much acceptance so far in legislative or judicial analysis. A legal right is commonly accompanied by the power of instituting legal proceedings for enforcement of it. Legal rights are normally enforceable by process of law. There could be a situation where a legal right itself is imperfect and, therefore,

becomes unenforceable in law. Every legal right has distinguishable characteristics, like it is vested in a person, it is available against a person and such right is enforceable in accordance with the provisions of law. A legal right could also be a vested right as it gives right to a person aggrieved to prefer an appeal in accordance with the principles of that statute. In simple language, a right to appeal is a statutory right, it is neither a natural nor a fundamental right.

36. An appeal is an application to a superior Court or Tribunal praying for reversal or varying or setting aside a judgment under appeal. A right which is conferred by statute or equivalent legislative authority is not a matter of practice or procedure and neither the superior nor the inferior Court or Tribunal nor both combined can create or take away such a right. Even the Civil Division of the Court of Appeal in England is bound by its own decisions. No appeal lies from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that Court, final or interlocutory. Right to appeal thus should be created by vested

specific jurisdiction. (**Halsbury Law of England, Fourth Edition**).

37. In the case of *Garikapati Veeraya* (supra), the Supreme Court in unambiguous terms stated the principle that right of appeal is a vested right which is created by a statute alone. This was reiterated by the Supreme Court in a more recent judgment and was followed with approval in *Kamal Kumar Dutta* (supra), where the Court held that right to prefer appeal is a statutory right and it could be exercised only in case of adverse decision and will be governed by the law prevailing at the time of commencement of the suit and comprise of successive rights of appeal from Court to Court which rarely constitute one proceeding. This legal right was also capable of being taken away either expressly or by necessary intendment by a subsequent Legislature.

38. In the case of *Maria Cristina De Souza Sodder and others vs Amria Zurana Pereira Pinto and others*, **(1979) 1 SCC 92**, the Supreme Court held as under :-

> "It is no doubt well-settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced and such right or remedy will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary application takes away such right or remedy."

39. The principle of `appeal being a statutory right and no party has a right to file appeal except in accordance with the prescribed procedure' is followed in the case of *M/s M Ramnarain Private Limited and another vs State Trading Corporation of India Limited*, **(1983) 3 SCC 75**, where the Supreme Court held as under:-

> "16. The right to prefer an appeal is a right created by statute. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of a suitable provision of some law conferring on the party concerned the right to file an appeal against any judgment, decree or order. The right of appeal so conferred on any party may be lost to the party in appropriate cases by the provisions of some law such as the law of limitation and also by the conduct of the party and in appropriate cases a party may be held to have become disentitled from enforcing the right of appeal which he may otherwise have."

40. This view was reiterated with approval by the Supreme Court in the case of *Gujarat Agro Industries Co. Ltd. Vs Municipal Corporation of the City of Ahmedabad and others*, **(1999) 4 SCC 468**, where the Court stated that even right of appeal can be made conditional or qualified and it is a creation of a statute alone. The Court held as under :-

> "Right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is a statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute, however, in regard to an appeal, the position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well." (Para 8).

41. Right of appeal is neither a natural nor inherent right vested in a party. It is substantive statutory right regulated by the statute creating it. (*Kondiba Dagadu Kadam vs Savitribai Sopan Gujar and others*, **(1999) 3 SCC 722**, and *Kashmir Singh vs Harnam Singh and another*, **2008 AIR SCW 2417).**

42. Thus, it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party. On the bare reading of provisions of Section 173 and in absence of any other specific provision providing further appeal, it is difficult to accept the view that with the aid of any of the provisions or by general practice the appellate order passed under Section 173 by a Single Judge of this Court would be further appealable by intra-Court appeal.

RIGHT OF APPEAL UNDER LETTERS PATENT :

43. It has been held that Letters Patent is a word of definite legal meaning. It is derived from the latin words *literae patents*. The Letters Patent are so called because they are open letters, they are not sealed up, but exposed to view, with the great seal pendant at the bottom and are usually directed or addressed by the King to all his subjects at large. Different Letters Patent have been handed down by the Sovereign in British India to Chartered High Courts which included only judicature of Bengal, Madras, Bombay, North-West Provinces, Patna, Lahore and Rangoon. (See **Blackstone's Commentaries on the Laws of England, Vol. II. pp. 284-85)**.

44. Now, we may examine the impact of Clause 15 of the Letters Patent which provides for intra-Court appeal. Clause 15 of the Letters Patent does not create a substantive right of appeal from the decision of the Single Judge, but such right is obviously subject to the

application of the stipulated condition. Right of appeal can be exercised only in accordance with the limitations specified in the provision granting right of appeal. Clause 15 of the Letters Patent reads as under :-

> "**15. Appeal to the High Court from Judges of the** Court:- And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of, the said High Court or one Judge of any Divisional Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a Judgement of one Judge of the said High Court from a Judge of any Division Court, pursuant to section 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction; in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is fit one for appeal; but that the right of appeal from other judgments of Judge of the

> High Court or of such Division Court shall be to Us, Our heirs of successors in Our or Their Privy Council, as hereinafter provided."

45. Clause 15 of the Letters Patent is the provision which grants right of appeal to the aggrieved party against the judgment of the learned Single Judge of the Court to Letters Patent Bench. The exception carved out to this right of appeal is that the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction. In other words, where the clause grants right of appeal, it has inbuilt exception and limitation applicable to said right of appeal. It is also a settled proposition of law that a right to appeal can be regulated and/or restricted by the provisions of Section providing such right. The legal right that is available to a party to

prefer an appeal from the judgment of the learned Single Judge thus is not a unrestricted or unfettered right. Besides the requirement that the order of the learned Single Judge as understood in common parlance has to be a judgment within the meaning of the said expression of clause 15 of the Letters Patent to perfect a right of appeal to litigant. Once it clears the parameter of a judgment and is not hit by any of the exceptions stated in the clause itself, an appeal may lie to a letters patent bench. Various aspects of Letters Patent Appeal and especially what is a judgment within Clause 15 of the Letters Patent has been dealt with by a Division Bench of this Court in a recent judgment delivered on 19th June, 2008 (*The Bombay Diocesan Trust Association Pvt. Ltd. v. The Pastorate Committee of the Saint Andrews Church & Ors.)*. A relevant observations of the said judgment are as under:-

> "10. While relying upon the case of *Vinita M. Khanolkar v. Pragna M. Pai and others,* 1998(1) SCC 500, it is argued that provision of appeal in clause 15 of the Letters Patent, which is a charter under which the High Court of Bombay functions, is not whittled down by the statutory provisions of section 6(3) of the

Specific Relief Act. In that case, the Supreme Court stated that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions could not get excluded unless the statutory enactment concerned expressly excludes appeals under under letters patent. It was also noticed that no such bar is discernible from language of section 6(3) of the Specific Relief Act holding that appeal under clause 15 would lie to the Letters Patent Bench. It needs to be noticed that in this case, the Supreme Court was primarily concerned with the provisions of the Specific Relief Act which in comparison to the Contempt of Courts act is a statute of general impact. Furthermore, the provisions of section 6(3) contemplates that no appeal shall lie from any order or decree passed in any suit instituted under that section nor shall any review of such order or decree be allowed. It was on the language of the section that the Supreme Court was of the view that jurisdiction of the court under section 15 of the Letters Patent was not ousted and the appeal was consequently, restored to the file of the High Court.

11. Similarly, in the case of *State of West Bengal and others v. Kartick Chandra Das and others*, (1996) 5 SCC 342, the Supreme Court again emphasised the principle that in absence of specific exclusion, the provisions of sections 4 to 24 and section 5 of the Limitation Act were applicable to the appeals filed under clause 15 including those under the Contempt of Courts Act. In that case, it was not an issue whether an appeal would lie to the Division Bench or not as recorded in para 4 of the judgment that maintainability of the appeal was not disputed. It is also useful to

notice that in that case, the appeal had been preferred against issuance of contempt notice by the Division Bench. The Supreme Court held that the Appellate Side procedure of the Calcutta High Court was applicable.

12. Lastly, reliance was also placed on the judgment of the Supreme Court in the case of *P.S. Sathapan (Dead) by Lrs. v. Andhra Bank Ltd. and others,* (2004) 11 SCC 672. In that case, the Court was primarily concerned with bar under section 104(2) of the Civil Procedure Code and clause 15 of Letters Patent of Madras High Court. The Apex Court again affirmed the principle of harmonious construction of section 104 which leads to the conclusion that Section 104(1) saves Letters Patent Appeal and bar of section 104(2) of the Civil Procedure Code does not apply. The only conclusion that can be arrived at is that unless there is specific exclusion by expression mention in the section then alone, the appeal would not lie. It will be appropriate to notice paragraphs 21 and 22 of this judgment on which the learned counsel placed heavy reliance.

> "21. We are of the opinion that in reaching this conclusion the Court missed the relevant portion of clause 15 of the Letters Patent of the Bombay High Court. Reliance cannot, therefore, be placed on this judgment for the proposition that under clause 15 of the Letters Patent of the Bombay High Court no appeal to a Division Bench from the order of the Single Judge in exercise of appellate jurisdiction is maintainable.
>
> 22. Thus the unanimous view of all courts

> till 1996 was that Section 104(1) CPC specifically saved letters patent appeals and the bar under Section 104(2) did not apply to letters patent appeals. The view has been that a letters patent appeal cannot be ousted by implication but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation. The express provision need not refer to or use the words "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred."

13. These judgments referred by appellant are different on facts and the judicial dictum does not have a direct bearing to the matters in issue before us in the present appeal. In fact, in the case of *Kartick Chandra Das* (supra), it was specifically conceded that appeals against notice of contempt lies and there was no determination on the question of maintainability of appeal even with reference to the provisions of Limitation Act. Moreover, these were primarily determination of lis between the parties in regard to certain personal reliefs and were not the cases of discharge of power within special jurisdiction as to contempt.

14. As is evident from the discussion of the judgments relied upon by the appellant, right of Letters Patent Appeal can be taken away by an express provision in an appropriate Legislation. It is not necessary that the section should expressly use the word "Letters Patent" but if on plain reading of the provision, it is clear that all further appeals are barred then even a Letters Patent Appeal would be barred.

The judgments cited by appellant do not have any direct bearing on issue in hand. In the controversy before us in as much as the provisions of the Specific Relief Act, section 104 of the CPC and the Limitation Act are not *pari materia* to the provisions of section 19 of the Contempt of Courts Act. Section 19 of the Act reads as under:

> "19. Appeals.- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-
>
> (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
>
> (b) where the order or decision is that of a Bench, to the Supreme Court:
>
> Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.
>
> (2) Pending any appeal, the appellate Court may order that-
>
> (a) the execution of the punishment or order appealed against the suspended;
>
> (b) if the appellant is in confinement, he be released on bail; and
>
> (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

> (3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intents to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).
>
> (4) an appeal under sub-section (1) shall be filed-
>
> (a) in the case of an appeal to a Bench of the High Court, within thirty days;
>
> (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

15. The language of section 19 where gives a statutory right to a party to maintain an appeal, there it restricts such right by using specific language in regard to punishing a person for contempt. The expression used is "An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt". Thus, the statute itself provides the class of cases in which an appeal shall lie. Once a special legislation restricts the right of appeal by specific language, it obviously excludes what is not specifically included. The intention of the Legislature is certainly not to permit or grant statutory right of appeal unless the order passed was for grant of punishment for contempt. The section is self-contained provision and even provides that the appeal shall lie to two Judges bench of the High Court where the decision is of a Single Judge of that court and to the Supreme Court where the order is by a

Bench of the High Court. The complete mechanism of right to appeal and forum to which the appeal would lie has been spelt out by the Legislature and, thus, there is no reason for the court to expand its scope to hold that appeal would lie by adding that even the order of discharge shall be included in the expression `punish for contempt'.

....

18. The appeals are filed against a decree or an order which is determination of a lis in accordance with law. The appeal would lie against such order or decree with the exception that such order or decree was not made in exercise of appellate jurisdiction. A decree as even contemplated under the provisions of Civil Procedure Code would be a finding on matters in issue between the parties and would decide such issues. Thus, the matter referred would be the one which decide the rights of the parties and in fact, is a substantial determination of rights of the parties to the lis before the Court of competent jurisdiction. As against this, a matter of contempt is primarily a matter between the Court and the contemnor and is not determination of any lis pending before the court on which parties are litigating. An order of discharge in a contempt, thus, would not be a judgment and order within the meaning of clause 15 of Letters Patent and an appeal against such an order is excluded under the language of section 19 of the Contempt of Courts Act which unambiguously states that only orders of punishment for contempt are appealable.

19. As far as this court is concerned, as back as in *Narendrabhai Sarabhai Hatheesing and others v.*

Chinubhai Manibhai Seth, AIR 1936 Bombay 314, the Division Bench took the view that order of court for breach of undertaking to court is not a judgment. An Order of the court refusing to commit a person for breach of an undertaking given to the court and embodied in the order of the Court cannot be said to be a judgment within the meaning of Clause 15, as it does not affect the merits of any question between the parties and hence is not appealable. The Bench also noticed a judgment of Full Bench of Calcutta High Court in *Mohendra Lall Mitter v. Anundo Coomar Mitter,* (1897) 25 Cal. 236 (F.B.) and declined to accept the view firstly as it was not binding and specifically for the reason that decision of the Calcutta High Court was in absence of any reason for the conclusion arrived at and ultimately rejected the contention that an order refusing the application to commit a person for contempt was appealable. The same principle was approved and distinguished by the Full Bench of this court in the case of *Collector of Bombay v. Issac Penhas,* AIR (35) 1948 Bombay 103, where the court held as under:

> "17. On the preliminary point as to whether an appeal lies, there has been a long and continuous controversy in the different High Courts as to the true meaning to be given to the expression "judgment" in Cl. 15 of the Letters Patent. I should have thought that, apart from authority, an order of committal for contempt was a judgment within that definition. The order undoubtedly constitutes final adjudication. It affects the merits of the case and it also determines the right and liability of the appellant. Let us therefore consider whether there is anything in the

reported decisions which are contrary to the view I am suggesting. The definition given by Sir Richard Couch, Chief Justice, in the two Calcutta decisions is considered to be a *locus classicus* as far as the definition of the expression "judgment" is concerned in Cl. 15, Letters Patent. The first of these decisions is reported in 8 Beng. L.R. 433. That was a case where an order was made directing the issue of a writ of *mandamus* to the Justices of the Peace for Calcutta to compel them to refer to arbitration question of compensation, and the question arose whether an appeal lay from that order, and Sir Richard Couch said in his judgment (p. 452):

"We think that `judgment' in Cl.15 means a decision which affects the merits of the question between the parties by determining some right or liability."

18. In the subsequent decision reported in 13 Beng. L.R. 91 the interpretation was slightly extended and the learned Chief Justice said (page 101):

A judgment "is not a mere formal order, or an order merely regulating the procedure in the suit, but one that has the effect of giving a jurisdiction to the Court which it otherwise would not have."

In that case the learned Chief Justice was considering an order refusing to set aside an order granting leave to sue to the plaintiff under Cl.12, Letters Patent.

19. The Madras High Court has always given a more liberal interpretation to the expression "judgment", and the leading case is the one reported in 35 Mad. 1, where we have the judgment of Sir Arnold White, and the opinion of that learned Chief Justice as to the true meaning of the expression "judgment" is (p.7):

"If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause."

20. This High Court has always preferred to follow the Calcutta High Court rather than the Madras High Court: or, in other words, it has undoubtedly given a more restricted meaning to the expression "judgment" than the Madras High Court has done- *see* the observations of Sir Basil Scott C.J. In 11 Bom. L.R. 241.

.....

23. Then we come to the decision which has created some difficulty, and that is the decision reported in 38 Bom. L.R. 571. The order with which the Divisional Bench of Sir John Beaumount C.J., and Rangnekar J. was concerned was refusing to commit a person for breach of an undertaking given to a Court,

and the Court held that no appeal lay from such an order. It is difficult to see how such an order could possibly be a `judgment' within the meaning of Cl. 15, Letters Patent and give the right of appeal to a person who had moved the Court for contempt and had failed to get an order for committal. It is impossible to say that any right or liability of the appellant was determined by the order of committal. The appellant had no right to get such an order from the Court. It was the discretion of the Court, and the Court having refused to exercise its discretion, the appellant could not say that any right of his was affected or any liability imposed upon him. Therefore on the facts of the case that decision is clearly distinguishable from the facts before us where the appellant has been ordered to pay a fine and has been held to be guilty of contempt. It cannot be disputed that in this case the appellant's rights are undoubtedly affected and that a liability has been imposed on him on a final adjudication by the learned Judge. But it is contended by Mr. Taraporewalla that the decision in 38 Bom. L.R. 571 is of wider import than the facts on which it was decided. It is suggested that that decision lays down that there is no appeal from any order made by a Judge in contempt proceedings whether he refuses to commit or whether he makes a committal order. I refuse to read that judgment of the Court of Appeal in that light. What is contended is that that judgment relies on the definition given by Sir Richard Couch C.J. and it is argued that the decision of Bhagwati J. is

not a decision between parties and, therefore, it cannot constitute a judgment. Now it is to be remembered that most of the decisions reported in the books dealing with the definition of `judgment' were cases between parties and usually the question that fell to be determined was whether a certain order was final or interlocutory; and if interlocutory, whether it was `judgment' within the meaning of Cl.15, Letters Patent. What we are concerned with here is not the case of a `judgment' given between parties in a litigation between parties but a `judgment' given against a party which affects his rights. It would be clearly wrong to apply a definition given in its own context applicable to its own facts and circumstances to an entirely different set of facts and circumstances. The expression "between the parties" in the definition of Sir Richard Couch J. is not an integral part of that definition. Therefore, in my opinion, in deciding that an appeal lies from an order of committal, we are in no way deviating from the accepted definition of Sir Richard Couch to the extent that that definition deals with the essentials and fundamentals of the expression `judgment' occurring in Cl. 15, Letters Patent. As I have already pointed out, the order of Bhagwati J. affects the merits of the question by determining a right or liability. It is not between parties, but that it could not be because the contempt proceedings were between the Court and the appellant and not between the appellant and the respondent. Sir Richard Couch did not intend and could

> not have intended that any decision affecting the rights of a party against which the Court has made an order could not be a `judgment' merely because there was no other party to those particular proceedings."

....

23. The expression "judgment" was examined by the Supreme Court in the case of *Hanskumar Kishan Chand v. The Union of India,* AIR 1958 SC 947. The Supreme Court while dealing with the powers of Federal Court specifically held that the word `judgment' used in section 2(b) would be a judgment, decree or order of a High Court in civil case and an order under Defence of India Act would not be a judgment, decree or order and, thus, leave to appeal could not be granted.

24. In the case of Shah Babulal Khimji v. Jayaben D. Kania and another, (1981) 4 SCC 8, the Supreme Court spelt out the guidelines and illustrations in regard to the Letters Patent clause 15 of the Bombay High Court and appeals which could be maintained before the Division Bench against the judgment. The court also explained the phrase `judgment'. While including some of the interlocutory orders within the ambit of the judgment, the Court stated that it should receive a much wider and liberal interpretation than the word `judgment' used in Civil Procedure Code. The court clearly stated the dictum that it cannot be said that every order passed by the trial Judge would amount to judgment. It seems that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. The court held that an order even though it keeps the suit alive but still

decides an important aspect of the trial and which affects the vital right of the defendants would be liable to be construed as judgment.

25. The Supreme Court in its earlier judgments and reference can be made to the case of *Nachiappa Chettiar and others v. Subramaniam Chettiar,* AIR 1960 SC 307, wherein the Apex court held that the word "judgment" cannot refer to the various interlocutory orders and judgments that may be passed during the hearing of the suit and so the word "judgment" cannot be given the meaning assigned to it by Section 2(9) of the Civil Procedure Code. It cannot mean in the context the statement given by the Judge of the grounds of a decree or order. It must mean a judgment which finally decides all matters in controversy in the suit. Similar view has been expressed by the Supreme Court in *Shri Radhey Shyam v. Shyam Behari Singh,* 1970(2) SCC 405.

....

28. Judgment by the court is an affirmation of a relation between the particular predicate and a particular subject. It is always a declaration that a liability, recognised as within the jural sphere, does or does not exist. A judgment, as the culmination of the action, declares the existence of the right, recognises the commission of the injury, or negatives the allegation of one or the other. [(*Gurdit Singh and others v. State of Punjab and others,* (1974) 2 SCC 260]

29. The principles which emerge from the consistent view taken by the Courts including the Supreme Court is, there has to be a conscious

determination of rights and liabilities between the parties to a lis before the court of competent jurisdiction. Undisputedly, contempt is a matter primarily between the Court and the contemnor. The proceedings of Contempt of Court would be initiated against the contemnor through any of the specified modes with or without consent of the specified authorities depending on the facts and circumstances of each case. The contempt jurisdiction vested in the Court by development of law as well as under the statutory provision is very wide and is of pervasive magnitude. A party to the proceedings before the court may bring to the notice of the Court any matter which invites the attention of the Court for taking any action under the provisions of the Contempt of Courts Act. Once such act is done, the matter squarely falls in the exclusive domain of the Court of competent jurisdiction, as the purpose of contempt jurisdiction is primarily to ensure enforcement of the order of the court and to maintain the dignity of the judicial administrative system. The contempt proceedings *per se* are not taken or declined for the benefit or interest of the individual party. When the court passes an order of discharge or holds that no case for contempt of Court is made out and declines to take action, no right or interest of the parties to the lis are determined by the court much less finally. Such an order besides being not appealable on the bare reading of the provisions of section 19 of the Contempt of Courts Act, would also not be a judgment within the meaning of clause 15 of the Letters Patent and as such, not appealable. The provisions of section 19 of the Act are not ambiguous and do not leave any scope for addition or substitution of a word. Definite legislative intent is clear that right to appeal shall only be available in the cases where there is an order of punishment. The

matter primarily and substantially being between the court and the contemnor , parties to the lis cannot be permitted to raise issues or litigate on the view of the court that a case of contempt is made out or not. Where the court in exercise of its judicial discretion and keeping in mind the well settled principles of contempt jurisdiction finds that contempt proceedings need not be initiated, or no contempt is made out or discharges the contemnor on merits of the case, the appeal before the Division Bench even with the aid of clause 15 of the Letters Patent would not be maintainable. In the present case, the learned Single Judge has concluded, as already noticed, that the petitioners themselves are not sure as to which of the contemnors are allowed to use the Welfare Centre and while taking an overall view of the matter held that this was not a fit case where action under the Contempt of Courts Act can be taken. This order of the learned Single Judge, in our opinion, is not appealable in view of the unambiguous language of section 19 of the Contempt of Courts Act and an appeal is not maintainable even under clause 15 of the Letters Patent. Although we have no hesitation in rejecting this appeal as being not maintainable, in the facts and circumstances of this case, Parties are left to bear their own cost."

46. Another facet of right of appeal under this clause is that the provisions of clause 15 are subject to legislative powers of the Governor-General in Legislative Council and also of the Governor-General in Council under Section 71 of the Government of India Act,

1915. Clause 44 of the Letters Patent specifically contemplates that the provisions of Letters Patent are subject to the exercise of legislative powers by the competent legislature. In other words, Clause 15 of the Letters Patent does not confer an absolute or unqualified right to appeal. This remedy is subject to the other laws enacted by competent Legislature. Viewed from that angle, the restrictions contemplated under Section 100-A of the Code of Civil Procedure would be a relevant consideration which would control right of appeal as envisaged under Clause 15 of the Letters Patent.

47. Clause 12 of Letters Patent is an independent clause which relates to the exercise of ordinary original jurisdiction in suits by this Courts. The orders which are passed by the High Court in exercise of its original jurisdiction would be apparently covered under clause 12 of the Letters Patent but of course to the limitation stated in the provision itself. But, in the present case, jurisdiction under Clause 12 is not a relevant consideration to answer the questions of law posed before us.

48. In *Shah Babulal Khimji's case (supra),* the Supreme Court , while explaining the ingredients of a judgment, held that Section 104 with Order XLIII Rule 1 of the Code of Civil Procedure is neither inconsistent, nor override, nor controls clause 15 of the Letters Patent. The judgment was in relation to the orders passed by the learned Single Judge of this Court in exercise of its original jurisdiction.

49. Similar view was also expressed by the Supreme Court in *Vinita M. Khanolkar's case (supra)* where the Court held that the order passed by the learned Single Judge in the proceedings under Section 6 of the Specific Reliefs Act would be appealable under Clause 15 of the Letters patent. The Courts stated the principle that the powers of the appellate court and right provided under the provision to appeal can be excluded by a statute expressly and it cannot be excluded by juridical provision barring the appeal.

50. We will shortly proceed to discuss the effect of provision of

Section 100-A of the Code of Civil Procedure where the Legislature has specifically used non obstante language with particular reference to letters patent.

INTERPRETATION OF STATUTES : * *

51. A statute is stated to be a will of the Legislature. It expresses a will of the Legislature, and function of the Court is to interpret the document, according to the intent of them that made it. It is a settled rule of construction of statute that the provisions should be interpreted with application of plain rule of construction. The courts normally would not imply anything in them which is inconsistent with the words expressly used by the statute. In other words, the Court would keep in mind that its function is *jus dicere, not jus dare*. The right of appeal being creation of a statute and being a statutory right does not invite unnecessary liberal or strict construction. The best norm would be to give literal construction keeping the legislative intent in mind.

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* 1. Maxwell on The Interpretation of Statutes, Twelfth Edition by P.St. J. Langan-Tripathi Publication.

2. Principles of Statutory Interpretation by Justice G.P. Singh, 11th Edition 2008 – Wadhwa Publication, Nagpur.

52. The Supreme Court in the case of *Shiv Shakti Co-op. Housing Society, Nagpur vs Swaraj Developers and Others,* reported in **(2003) 6 SCC 659,** while referring to the principles for interpretation of statutory provisions, held as under: -

> "19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse.*) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat v. Dilipbhai Nathjibhai Patel*). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tipton) Ltd.*] Rules of interpretation do

> not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per *Lord Loreburn, L.C. In Vickers Sons and Maxim Ltd. v. Evans,* quoted in Jumma Masjid v. Kodimaniandra Deviah.)"

53. The Law Commission of India, in its 183rd Report, while dealing with the need for providing principles of interpretation of statute as regards the extrinsic aids of interpretation in General Clauses Act, 1897 expressed the view that a statute is a will of legislature conveyed in the form of text. Noticing that process of interpretation is as old as language, it says that the rules of interpretation were evolved even at a very early stage of Hindu civilization and culture and the same were given by *`Jaimini',* the author of *Mimamsat Sutras*, originally meant for *srutis* were employed for the interpretation of *Smrities* also. While referring to the said historical background, the Commission said thus: -

> "It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of

interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of `meaning', i.e., what the word means and another aspect conveys the concept of `purpose' and `object' or the `reason' or `spirit' pervading through the statute. The process of construction, therefore, combines both the literal and purposive approaches. However, necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684 has held:

> ".....If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self defeating."

Recently, again Supreme Court in Grasim Industries Ltd. v. Collector of Customs, Bombay, (2002)4 SCC 297 has followed the same principle and observed:

> "Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory

provisions."

54. Above stated principles clearly show that the Court can safely apply rudiments of plain construction to legislative intent and object sought to be achieved by the enactment while interpreting the provision of an Act. It is not necessary for the Court to implant or exclude words or over emphasize the language of a provision where it is plain and simple. We have already noticed that Section 100-A opens with a non obstante clause and clause 44 of the Letters Patent refers to the aspect that the letters patent would be read in community with the legislative enactment. A clause beginning with `notwithstanding anything contained in any other law for the time being in force including the Letters Patent' normally would show the intent and the view of the Legislature enacting part of the section to give overriding effect over the provision of that Act or other laws in case of conflict. The enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. In the case of Union of India & Anr. v. G.M. Kokil & Ors., reported in

1984(Supp) SCC 196, the Supreme Court observed thus:-

> "A non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

55. The above observations have also been reiterated by the Supreme Court in the case of *Pannalal Bansilal Patil v. State of Andhra Pradesh,* reported in **AIR 1996 SC 102**3 and in the case of *T.R. Thandur v. Union of India,* reported in **AIR 1996 SC 1643.** Of course, a non *obstante* clause has to be distinguished from the phrase "without prejudice". A provision enacted "without prejudice" to another provision does not have the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with other provision. It is also to be kept in mind that the wide meaning of non obstante clause and the enacting words following it cannot be curtailed when the use of wide language accords with the object by the Act.

56. While dealing with interpretation of statutes regulating appeals the treatise of principles of statutory interpretation by Justice G.P. Singh (11th Edition 2008) explains:-

> "An appeal is the "right of entering a superior court and invoking its aid and interposition to redress an error of the court below" and "though procedure does surround an appeal the central idea is a right". The right of appeal has been recognised by judicial decisions as a right which vests in a suitor at the time of institution of original proceedings. Any change in the law relating to appeals, after institution of original proceedings, which adversely touches this vested right is presumed not to be retrospective."

57. In the case of *A.G. Varadarajulu & Anr. vs State of T.N. & Ors.,* reported in **(1998) 4 SCC 231,** the Supreme Court held as under: -

> "16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over

> another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose, reported in AIR 1952 SC 369, Patanjali Sastri, J observed:
>
> > "The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously."

58. In the case of *Iridium India Telecom Ltd. vs Motorola Inc*., reported in **(2005) 2 SCC 145**, the Supreme Court, while relying upon the judgment of the of the Constitution Bench in the case of *P.S. Sathappan vs Andhra Bank Ltd*., reported in **(2004) 11 SCC 672** did not accept the contention that the provision of superior legislation viz. Code of Civil Procedure would override the provision of the Letters Patent but clearly noticed firstly that there was no conflict between Section 104 of the Code of Civil Procedure and the Letters Patent and they could be harmoniously interpreted and permitted to operate in their field but specifically approved earlier view that once there was specific exclusion the provisions of Letters Patent would be overridden

by the provisions of the Code. This was with reference to the language of Section 4 of the Code. Once there was specific provision to the contrary applicability of the special law could be excluded. It categorically specified and referred view of constitution bench in *P.S. Sattapan's case (supra)* that the specific provisions of this kind would be a provision like Section 100-A of the Code.

59. On the clear analysis and application of judicial interpretative process, it is clear that Section 100-A of the Code of Civil Procedure and the Clause 15 of the Letters Patent would have to be construed on their plain reading and without any conflict.

DISCUSSION ON MERITS :

60. The factual matrix of the case has already been stated by us above. Suffice it to note that the present appeals have been filed after coming into force a provision of Section 100-A of the Code of Civil Procedure (i.e. 1st July, 2002). All these appeals have been

preferred against the judgment of the learned Single Judge passed in exercise of its appellate jurisdiction. The appeals before the learned Single Judge were preferred in terms of Section 173 of the Motor Vehicles Act and were accordingly decided by the learned Single Judge vide judgments dated 12th February, 2004 and 25th January, 2005. There is undoubtedly no provision contained in the M.V. Act which gives right to appeal to any dissatisfied litigant to prefer an appeal against the appellate judgment of the learned Single Judge. In other words, special statute does not provide any right of second appeal against the judgment of the appellate court. The Tribunal certainly has trappings of a civil court, may be, it is not a civil court *in stricto senso*. Once the special law and even the M.V. Act which is treated to be a self-contained Code, and which do not provide for a grant of specific right of second appeal, the same cannot be made available by a recourse to any general provision. It is an unquestionable proposition of law that right of appeal is a statutory right and not a general, natural, or a fundamental right. In the absence of any provision granting such statutory right to prefer second

appeal, the litigant cannot be permitted to rely upon the general provisions, if at all there is any, to prefer a second appeal. The award made by the Motor Accident Claims Tribunal under Section 168 of the Act even if it is treated as a decree and so is the judgment of the learned Single Judge passed in appeal, still the Court would not be able to take recourse to general provision of the Code and for that matter, it will hardly be of any consequence as to whether the proceedings before the Tribunal are at parity with the civil court or actual proceedings are before the civil court. Non availability of right of appeal under the statute would be a complete answer to non-maintainable of such an appeal.

61. Section 173 of the Motor Vehicles Act provides only for a restricted right of appeal and the same cannot be stretched by interpretative process to hold that even a second appeal or an appeal against the appellate jurisdiction of the Single Judge would be maintainable. This would obviously be an interpretation which would neither further the cause of the Legislation nor it will be true on the

plain reading of the Section.

62. We have already noticed that the Tribunal has the trapping of a Civil Court and various procedural and effective provisions of the Code of Civil Procedure have been made applicable substantially to the proceeding before the Tribunal. After the Award is passed by the Tribunal, an Appeal under Section 173 is maintainable before the High Court and the High Court would exercise its appellate jurisdiction arising from a statute with the help of the provisions of the Code of Civil Procedure. Section 100A was introduced by the Legislature with a specific object. The object being to curtail the right of Second Appeal and attach finality to the judgment of the first appellate Court in normal course of law. That is the reason why the Legislature has specifically worded Section 100A while opening the Section with a non-obstante clause and provided over-riding effect over the provisions of Letters Patent, other law and even other instrument having the force of law. The intent of the Legislature to provide precedence to enforcement of Section 100A is patently clear

from the unambiguous and definite language of Section 100A. We must notice here that both the Motor Vehicles Act and the Code of Civil Procedure are Central enactments. No State amendment has been carried by the State of Maharashtra to dilute or alter the effect of the language of either Section 173 of the Motor Vehicles Act or Section 100A of the CPC. The Legislature was fully aware of the provisions of Section 173 as well as of the Letters Patent when it introduced Section 100A which came into force on 1st July 2002. Once the Legislature , being aware of the existing law, has worded Section 100A in specific terms, then it has to be given its natural and effective meaning. The Court while construing these provisions by applying the principles of harmonious construction or otherwise, cannot frustrate the object of provisions of Section 100A which has been given over-riding effect by use of non-obstante clause and with specific exclusion of other laws. Clause 15 of the Letters Patent thus would have to be read in conjunction with Clause 44 of the said Letters Patent and Section 100A of the CPC that too in light of the language of Section 173 of the Motor Vehicles Act. The cumulative reading and analysis of

these provisions in consonance with the Rules of interpretation stated above, would lead to simple and one conclusion that the Letters Patent appeal or an appeal against the judgment of the learned Single Judge passed in exercise of its appellate jurisdiction against the appellate judgment passed by the Court subordinate to the High Court, would not be appealable. Where Section 100A constitutes a complete bar against right to prefer an appeal against an appellate decision, there appeal cannot be preferred with the aid of Clause 15 of the Letters Patent against such judgment. Thus, either way, the obvious conclusion would be that no intra-Court appeal is maintainable in the High Court against the judgment passed by the learned Single Judge in exercise of its appellate powers in terms of Section 173 of the Motor Vehicles Act.

63. Another aspect which would support the view which we are taking is that the whole object of introducing Section 100A was to curtail litigation by regulating the right of appeal. Attempt obviously is to attach finality to the judgment of the learned Single Judge of the

High Court particularly where he has passed the judgment while exercising appellate jurisdiction of the High Court. Where the judgment of the Tribunal and the learned Single Judge is treated as a judgment within the meaning of Clause 15 of the Letters Patent or not or under the provisions of the Code of Civil Procedure, would hardly make any difference on the conclusion inasmuch as even against an order of the Single Judge in exercise of appellate jurisdiction, a further appeal is prohibited in terms of Section 100A. The Legislative object of regulating the right of appeal and rendering Second Appeal from appellate order or judgment impermissible would stand defeated by any other interpretation. The rule of mischief contemplates that what remedy the Parliament resolved and attempted to cure the disease should be permitted to operate rather than the same be defeated by process of interpretation. The Court while performing its function of interpretation of law would make such construction as shall suppress the mischief and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*. The mischief which is sought to be controlled and

avoided by the Legislature is not to grant repeated right of appeal and to introduce the concept of finality to the appellate judgment, decree or order. The provisions of the Motor Vehicles Act do not recognise an appeal from an appellate jurisdiction of the High Court passed under Section 173 of the Motor Vehicles Act. On the contrary, Section 100A specifically bars filing of an appeal against such judgment. The provisions of Section 100-A have a precedence and take limited exception to the provisions of Clause 15 of the Letters Patent. On plain reading of Clause 15 of the Letters Patent, an appeal to a Division Bench of the High Court from the judgment of the learned Single Judge passed while deciding an appeal against the appellate judgment, and decree or order passed by the Court of competent jurisdiction subordinate to the High Court would not be maintainable. The only exception to this general rule is that where the learned Single Judge grants a certificate of fitness as contemplated under the language of Clause 15 of the Letters Patent. This we have noticed only to elucidate the point that Clause 15 will have to be read with Clause 44 of the Letters Patent and thus giving precedent to Section 100-A of

the Code of Civil Procedure. The cumulative reading of all these provisions would thus show that Clause 15 of the Letters Patent cannot be treated as a provision granting independent right of appeal de hors the other relevant provisions noticed by us in this judgment.

64. The Supreme Court in the case of *P S Sathappan* (supra) clearly stated while referring to Clause 44 of the Letters Patent that provisions of Letters Patent were subject to legislative powers of the Governor-General-in-Legislative Council and, therefore, in the present-day context, subject to legislative power of the appropriate legislature. (Emphasis supplied).

65. Now we would refer to the judgments, some of which were relied upon by either party before us in support and against the proposition formulated at the beginning of this judgment.

66. In the case of *Kamal Kumar Dutta* (supra), the Supreme Court was dealing with Sections 397 and 398 of the Companies Act and while holding that an appeal against an order made by the Company Law Board under Section 10E was maintainable before the

High Court under Section 10F and after referring to the pre-amendment provisions held that no appeal was maintainable against the order of the learned Single Judge passed in appeal in face of Section 100A and despite the language of Clause 15 of the Letters Patent of the Calcutta High Court and held as under :-

> "16. Appeal lies under Letters Patent from the judgment of the learned Single Judge of the High Court to the Division bench. In this connection, learned counsel placed reliance on a decision of this Court in the case of Garikapatti Veeraya vs N Subbiah Choudhury reported in 1957 SCR *488* and submitted that the appeal is vested right and it cannot be taken away. Alternative submission was if clause 15 does not apply, appeal lies under Section 483 of the Act. In this connection reliance was placed on decisions of this Court in the case of *Arati Dutta vs M/s Eastern Tea Estate (P) Ltd* reported in (1988) 1 SCC 523 and the in the case of *Maharashtra Power Development Corporation Limited vs DabholPower Company & Ors., reported in (2003) 117 Company Cases 651*. As against this, learned senior counsel for the appellants submitted that Section 10F of the Act came into being with effect from 31.5.1991. Prior to that application under Sections 397 and 398 of the Act was being filed with the Company Judge in the High Court. But after the amendment of the Act by Act 31 of 1988, this power under Sections 397 & 398 of the Act has been given to the CLB. Under Section 10E of the Act, the Company Law Board was created. It deals with

applications under Sections 397 and 398 of the Act. Therefore, learned Single Judge has not exercised original jurisdiction and as such the appeal contemplated under clause 15 of the Letters Patent is not maintainable. Learned senior counsel invited our attention to Section 100A of the Code of Civil Procedure which came into being with effect from 1.7.2002. This section starts with non-obstante clause that notwithstanding anything contained in any Letters Patent for any High Court or in any other 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. Therefore, it was pointed out that in view of the latest amendment in the Code of Civil Procedure, Letters Patent or intra court appeal will not lie when the learned Single Judge has exercised appellate jurisdiction. In fact, this amendment seems to have been brought about on the recommendations of the Malimath Committee report that right to appeal should be curtained and only one appellate forum should be available. Therefore, in view of this recommendations, this amendment was brought about. In support of this contention learned senior counsel invited our attention to the following decisions.

(i) (2004) 11 SCC 672 (P.S. Sathappan (dead) by Lrs Vs. Andhra Bank Ltd. & Ors.)

(ii) (2003) 10 SCC 361 (Subal Paul vs Malina Paul & Anr.)

(iii) AIR 2003 AP 458 (Gandla Pannala Bhulaxmi vs. Managing Director, APSRTC & Anr.)

(iv) (1987) 62 Company Cases 504 (Rev. C.S. Joseph & Ors. vs. T.J. Thomas & Ors.)

(v) AIR 2004 Ker. 111 (Kesava Pillai Sreedharan

Pillai & etc. vs. State of Kerala & Ors.)

17. We have considered the rival submissions of the parties. The first question that we have to examine is whether the appeal against the order of the learned Single Judge lies before the Division Bench under Letters Patent or not. It may be relevant to mention here that prior to the amendment of the Act, the power under Sections 397 & 398 used to be exercised by the Company Judge of the High Court. Appeal against that order of the learned Single Judge lies under Section 483 of the Act before the Division Bench of the High Court. Section 483 of the Act reads as under :

"483. Appeals from orders – Appeals from any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

But after the amendment the power which was being exercised under Sections 397 & 398 of the Act by learned Single Judge of the High Court is being exercised by the CLB under Section 10E of the Act. Appeal against the order passed by the CLB, lies to the High Court under Section 10F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 was that any order passed by the Single Judge exercising the power under Sections 397 & 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment the power has been given to the CLB and

the appeal has been provided under Section 10F of the Act. Thus Part 1A was inserted by the amendment with effect from 1.1.1964. But the constitution of the Company Law Board and the power to decide application under Sections 397 & 398 of the Act was given to the CLB with effect from 31.5.1991. Therefore, on reading of Sections 10E, 10F, 397 & 398 of the Act, it becomes clear that it is a complete code that applications under sections 397 & 398 of the Act shall be dealt with by the CLB and the order of the CLB is appealable under Section 10F of the Act before the High Court. No further appeal has been provided against the order of the learned Single Judge. Mr. Nariman, learned senior counsel for the respondents submitted that an appeal is a vested right and therefore, under clause 15 of the Letters Patent of the Calcutta High Court, the appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the order of the learned Single Judge under the Act. In this connection, learned counsel invited our attention to a decision of this Court in the case of *Garikapatti Veeraya vs. N Subbiah Choudhury* reported *in* (1957) SCR SCR 488 and in that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows :

"... that the contention of the appellant was well-founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and

comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment either expressly or by necessary intendment."

So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment either expressly or by necessary intendment. The Parliament while amending Section 100A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1.7.2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of learned single Judge to the Division Bench.

Section 100A of the Code of Civil Procedure reads as .....

Therefore, where appeal has been decided from an original order by a single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by the CLB and against that appeal has been provided before the High Court under Section 10F of the Act, that is an appeal from the original order. Then in that case no further Letters Patent Appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the manner where learned single Judge hears an appeal from the original order. Original order in the present case was passed by the CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10F of the Act

before the High Court. Learned single Judge having passed an order, no further appeal will lie as the Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made in the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100A. The intendment of the Legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for itself. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the high Court in exercising Letters Patent in a matter where a single Judge has decided the appeal from original order, has been taken away and it cannot be invoked in the present context. There is no two opinion in the matter that when the CLB exercises its powers under Sections 397 & 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, the CLB while exercising its original jurisdiction under Sections 397 & 398 of the Act passed the order and against that order appeal lie to the learned single Judge of the High Court and thereafter no further appeal could be filed.

18. In this connection, our attention was invited to a decision in the case of Arati Dutta vs M/s Eastern Tea Estate (P) Ltd. reported in (1988) 1 SCC 523. This was a case in which the power was exercised by learned single Judge under Sections 397 & 398 of the Act and

> against that order appeal lay to the Division Bench of the High Court under Section 483 of the Act. In that context, their Lordships observed that mere absence of procedural rules would not deprive the litigant's of substantive right conferred by the statute. We have already explained above that earlier the power under Sections 397 & 398 of the Act was being exercised by learned Company Judge in the High Court and therefore, appeal lay to the Division Bench under Section 483 of the Act. If the power has been exercised by the Company Judge in the High Court, then one appeal shall lie before the Division Bench of the High Court under Section 483 of the Act. But that is not the situation in the present case. Therefore, this decision cannot be of any help to respondents."

67. This judgment in fact is a complete answer to the arguments raised on behalf of the Appellants. In that case, the Supreme Court even took the view that a body like Company Law Board has the trapping of a Civil Court and it exercises original jurisdiction under Sections 397/398 of the Companies Act against which an appeal lies to the Single Judge. It also rejected the contention that Section 100A does not create a specific bar. While referring to the judgment of the Supreme Court in *Subal Paul vs Malina Paul and another*, **(2003) 10 SCC 361**, the Court referred with approval the dictum of the Court which reads as follows :

> "Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

Motor Accident Claims Tribunal which has all the trapping of a Civil Court, discharges its judicial functions subject to the superintendence and control of the High Court. In fact, the High Court being its appellate Court, would exercise all the control over the Motor Accident Claims Tribunal.

68. It can be useful to notice at this stage itself that in *Kamal Kumar* Dutta (supra), the view taken by a Division Bench of this Court in the case of *Maharashtra Power Development Corporation Limited vs Dabhol Power Company and others,* **(2003) 117 Company Cases 651 = AIR 2004 BOM 38**, that appeal shall lie against the judgment of the Single Judge passed in Appeal against the order of Company Law Board as the Letters Patent Appeal or a statutory appeal under special enactment and will not be affected by the provisions of Section 100-A,

was specifically rejected and the view taken by this Court was held to be incorrect proposition of law.

69. In the case of *Municipal Corporation of Brihanmumbai and another vs State Bank of India*, **(1999) 1 SCC 123**, the Court was concerned with maintainability of a Letters Patent Appeal under Clause 15 from the judgment and order of the Single Judge passed on an Appeal under Section 218-D of Bombay Municipal Corporation Act. The Bombay Municipal Corporation Act, 1888 is a complete code and contains provisions of filing of appeals, etc., against the order made under the Act. In terms of Section 127(1) of the Act, the jurisdiction is exercised by the Chief Judge of Small Causes Court and the appeal against that order was preferred before the High Court under Section 218-D of the Act and the Court held that no Second Appeal could lie from that order observing as under :

> "9. Thus, according to Section 218-D, an appeal shall also lie to the High Court from any decision of the Chief Judge of the Small Cause Court in an appeal under Section 217, "upon a question of law or usage

having the force of law or the construction of a document". That the respondent had taken recourse to Section 218-D(1) in filing an appeal against the appellate order of the learned Additional Chief Judge of the Small Cause Court is not in dispute. The appellant has not questioned the maintainability of the appeal filed by the respondent under Section 218-D of the Act before the learned Single Judge of the High Court before us. Thus, it is obvious that the appeal filed by the respondent under Section 218-D of the Act was a second appeal against the appellate order made by the Additional Chief Judge, Small Cause Court. Under the Bombay Municipal Corporation Act, no further appeal has been provided against the judgment of a learned Single Judge of the High Court deciding the second appeal under Section 218-D of the Act against an appellate order of the Chief Judge of the Small Cause Court passed under Section 217(1) of the Act. Section 100-A of the Code of Civil Procedure, which was introduced by the Amendment Act, 1976, specifically bars any further appeal in such cases. ....

10. This section has been introduced to minimise the delay in the finality of a decision. Prior to the enactment of the above provision, under the letters patent, an appeal against the decision of a Single Judge in a second appeal was, in certain cases, held competent, though under Section 100 of the Code of Civil Procedure, there was some inhibition against interference with the findings of fact. The right of taking recourse to such an appeal has now been taken away by Section 100-A of the Code of Civil Procedure (supra). Since an appeal under Section 217(1) of the Act is a first appeal in a second forum/court and an appeal under Section 218-D of the Act is the second appeal in the third forum/court, no further appeal

> would be competent before the fourth forum/court in view of Section 100-A of the Code of Civil Proeedure (supra)."

70. At this stage, even at the cost of repetition, we may notice that the provisions of Section 173 of the Motor Vehicles Act provide for an appeal against the Award of the Tribunal specifically and do not contemplate any further appeal. Thus, the statute does not specifically provide for any further right of appeal.

71. A Division Bench of Rajasthan High Court in the case of HYPERLINK "http://R.S.R.T.C/" HYPERLINK "http://R.S.R.T.C/"*R.S.R.T.C. & etc. etc. vs Vaibhav Kumar and others, etc.,* **AIR 2007 RAJASTHAN 147**, while dealing with identical questions relating to maintainability of a Letters Patent Appeal against the appellate order passed by the Single Judge of the High Court under Section 173 of the Motor Vehicles Act, held that the further intra-Court appeal is barred by Section 100-A of the Code of Civil Procedure. It mainly relied upon the judgment of the *Kamal Kumar Dutta's case (supra)*, while also referring to other

provisions including a view of Full Bench of the Andhra Pradesh High Court in the case of *M/s United India Insurance Co. Ltd. vs. S. Surya Prakash Reddy and another*, **2006 (4) Andh L T 448,** The Court held as under :-

> "16. A Full Bench of the Andhra Pradesh High Court in the case of Gandla Pannala Bhulaxmi v APRTC and another, AIR 2003 AP 458, was seized with the question whether the right of appeal available under the Letters Patent is taken away by Section 100A of the Civil Procedure Code in respect of the matter arising under special enactments or other instruments having the force of law. That was a case where Letters Patents Appeal was preferred from the order of a Single Judge passed in an appeal under Section 173 of the Motor Vehicles Act. The Full Bench of the Andhra Pradesh High Court upon consideration of the amended provision of Section 100A and the judgment of the Supreme Court in the case of Vinita M Khanolkar v Pragna M Pal, AIR 1998 SC 424 and another decision of the Supreme Court in Sharda Devi v State of Bihar, AIR 2002 SC 1357, held that Section 100A of the Code of Civil Procedure in clear and specific terms prohibits further appeal against the judgment and decree of a Single Judge to a Division Bench notwithstanding anything contained in the Letters Patents. It was held that the Letter Patents which provides for further appeal to a Division bench remains intact but the right to prefer a further appeal is taken away even in respect of the matters arising under a special enactment or other instruments having the force of law.

17. The view of the Kerala High Court is on the same lines. A Full Bench of Kerala High Court in the case of Kesava Pillai Sreedharan Pillai and etc. v State of Kerala and others, AIR 2004 Kerala 111, was concerned with the question whether an appeal from a judgment, decree or order passed by the Single Judge on an appeal against the order of a Court or tribunal is maintainable despite Section 100A of the Code of Civil Procedure effective from 1st July, 2002.

18. The Full Bench of the Kerala High Court noticed that the intention of the Legislature by enacting Section 100A was to abolish an intra-Court appeal to the Bench of two Judges of the same High Court from a decision rendered by a Single Judge. It held that Section 100A of the Code of Civil Procedure would prevail over the provisions contained in Section 5(ii) of the Kerala High Court Act. We may observe here that the said provision is similar to erstwhile Section 18 of the Rajasthan High Court Ordinance, 1949 regarding further appeal to the Bench of two Judges from the decision of the Single Judge. The Full Bench of Kerala High Court has thus held that the right of further appeal as provided under Section 5 (ii) of the Kerala High Court Act stands abrogated by Section 100A of the Civil Procedure Code w. e. f. 1st July, 2002.

19. The Supreme Court in Subal Paul v Malina Paul and another, (2003) 10 SCC 3611 : AIR 2003 SC 1928, was concerned with the question whether the Letters Patent Appeal would lie from the judgment of a Single Judge of the High Court filed under Section 299 of the Indian Succession Act. Pertinently in Subal Paul's case the Supreme Court observed that whenever a statute provided such a bar it did so expressly as would appear

from Section 100A of the Code of Civil Procedure. It is also important to notice that in Subal Paul an appeal was preferred before the Division Bench from the order of the Single Judge prior to 1st July, 2002.

20. The Constitution Bench of the Supreme Court in P.S. Sathappan (dead) by L.Rs. V Andhra Bank Ltd. & Ors., (2004) 11 SCC 672 : AIR 2004 SC 5152, extensively dealt with the provisions contained in Section 100A and the other provisions of the Code of Civil Procedure, more particularly, Sections 4 and 104 and had held that when the Legislature wanted to exclude the Letters Patent Appeal, it specifically did so and the words used in Section 100a were not by way of abundant caution. That is what the Supreme Court said in P.S. Sathappan (supra) (Para 30 of AIR) :-

"It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a Letters Patent Appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4, CPC. Thus, now a specific exclusion was provided.

"100-A : .....

To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the

law at the relevant time. At the relevant time neither Section 100A nor Section 104(2) barred a letters patent appeal."

21. The recent decision that squarely concludes the controversy is the decision of the Supreme Court in the case of Kamal Kumar Dutta, 2006 AIR SCW 4594. That was a case where the Company Law Board passed order under Sections 397 and 398 of the Companies Act. An appeal was filed before the High Court under Section 10F of the Companies Act. The said appeal was heard and disposed of by the Single Judge. From the order of the Single Judge under Section 10F of the Companies Act, the matter was carried to the Apex Court. Before the Apex Court, an objection was raised regarding maintainability of the appeal on the ground that the appellants have alternative remedy of approaching the Division Bench under Clause 15 of the Letters Patent and that the appellants ought to have availed the said remedy. Dealing with this aspect, the Supreme Court held that Letters Patent appeal against the order passed by a Single Judge in an appeal under Section 10F of the Companies Act would not be maintainable.

22. It would be seen that the Supreme Court held that the power exercised by the Company Law Board under Sections 397 and 398 of the Companies Act is a quasi-judicial power as original authority. It may not be a Court but it has all the trappings of a Court and, therefore, the Company Law Board while exercising its original jurisdiction under Section 397 and 398 of the Companies Act passed the order and against that order appeal would lay to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

23. The legal position exposited by the Supreme Court in Kamal Kumar Dutta, 2006 AIR SCW 4694, applies on all fours to the order/award passed by the Motor Accident Claims Tribunal under Section 168 of the Motor Vehicles Act and where such order/award is carried in an appeal under Section 173 of that Act. Even if it be assumed that the Motor Accident Claims Tribunal is not a Court as is the term ordinarily understood, it is beyond doubt that such Tribunal has all the trapping of a Court. Though the Tribunals occupy a special position of their own under the scheme of the Courts and Tribunals and special matters and questions are entrusted to them for their decision yet they share with the Courts one common characteristic viz. : both the Courts as well as Tribunals are constituted by the State and are invested with judicial functions as distinguished from purely administrative or executive functions. It is the State's inherent judicial power which is discharged by the Courts and Tribunals, if the Company Law Board constituted under the Companies Act in its adjudicatory powers has the trappings of a Court and an appeal under Section 10F of the Companies Act from its order to the Single Judge is not amenable to further appeal (Letters Patent) to the Division Bench of the same Court because of Section 100A of the Code of Civil Procedure, a fortiori, an order passed by the Single Judge in appeal under Section 173 of the Motor Vehicles Act from the order/award of the Motor Accident Claims Tribunal shall not be subject to intra-Court appeal in view of the bar created by Section 100A of the Code of Civil Procedure effective from 1st July, 2002."

72. The Bench also noticed the distinction between the decree, order and the award. It held that decision of the Single Judge in Appeal under Section 173 of the Motor Vehicles Act is nothing but a judgment. We adopt the reasoning and have no hesitation in coming to the conclusion that the Award of the Tribunal and in any case the judgment of the learned Single Judge passed under Section 173 of the Motor Vehicles Act in appeal has all the ingredients of a judgment within the meaning of Section 15 of the Letters Patent and/or under the Code of Civil Procedure.

73. The provisions of Letters Patent, being a special law, as opposed to Civil Procedure Code which would be generally applicable to all Courts, would have normally taken precedence and regulated the right to file an appeal, but for the non-obstante clause and specific exclusion of its application in terms of Section 100A of the Code of Civil Procedure. In the case of *P.S. Sathappan* (supra) as well as in the case of *Iridium India Telecom Ltd.* (supra), it was held that the provision of Section 100A is the provision which specifically excludes

application of other laws.

74. We have discussed in some elaboration, the reasons for arriving at a conclusion that the Letters Patent Appeal against the appellate judgment passed in exercise of powers conferred on the court under Section 173 of the Motor Vehicles Act is not maintainable. Similar view was taken by a Five Judge Bench of the Andhra Pradesh High Court in the case of *M/s United India Insurance Co. Ltd. vs. S. Surya Prakash Reddy and another*, **2006 (4) Andh L T 448,** and a Full Bench of the Madhya Pradesh High Court in the case of *Laxminarayan vs Shivlal Gujar*, **2003 91) MPLJ (FB) 10 = AIR 2003 MP 49 (FB**). With respect, we also adopt the reasoning given by the two High Courts in support of our view. We also add and follow the view of these Courts which is in consonance with the judgment of the Supreme Court afore-referred. This principle would not apply to the Appeals which were preferred prior to 1st July 2002 as the provisions of Section 100A are prospective in their operation and limitations.

75. It is a settled principle of law that appeal is continuation of original proceedings and the procedural law regulating the right of appeal would be prospective unless and until it is clearly spelt out to the contrary. Equally well settled is the principle that right of appeal being a statutory right can be regulated and/or even taken away by a subsequent Legislation. There being no fundamental right or a general right to prefer appeals, the appeals instituted prior to 1st July 2002, before introduction of Section 100-A on the statute of Code of Civil Procedure would be controlled by earlier law and the appeals filed thereafter would be regulated by the present provisions of Section 100-A of the Code.

76. In the case of *Kamla Devi vs Kushal Kanwar and another*, **(2006) 13 SCC 295**, the Supreme Court, where the Appeal before the learned Single Judge under the provisions of the Indian Succession Act was filed in the year 1992 against the order passed by the learned Single Judge dated 13th February 1992, held that the Letters Patent Appeal would be maintainable as it was filed prior to coming into

force of the Amending Act of 2002 Act. The Supreme Court also noticed the judgments in the case of *Kamal Kumar Dutta* (supra) and *Subal Paul* (supra). The main contention in these cases was with regard to retrospective or prospective operation of Section 100-A and also that for appeals filed prior to Amendment Act, it had not taken away the right of appeal provided the ingredients of Clause 15 of the Letters Patent were satisfied. Obviously, one of the relevant considerations would be as to when the right to file an appeal arose. As noticed in the case of *Kamla Devi* (supra), the judgment was passed on 13th February 2002 and appeal itself was filed at that time and, therefore, was controlled by the law prior to the amendment of 1st July 2002.

77. Having noticed the relevant principles of law and the interpretation that the relevant provisions of law need to be interpreted on settled canons of interpretative jurisprudence, now we may analyse the view taken by a Division Bench of this Court in the case of *Asha Joshi* (supra) which is the very basis for the present

Reference. In paragraph 40 of the said judgment, the Bench concluded as under :-

> "40. To sum up, we hold that :
>
> (a) Section 100-A of the Code of Civil Procedure would apply on to the proceedings governed by the Code;
>
> (b) Proceedings under section 140, 163-A or 166 of the Motor Vehicles Act are not governed by the Code and Claims Tribunal is not a Civil Court;
>
> (c) Award by Tribunal is not a decree or order of a Civil Court;
>
> (d) Such award is not a decree or order made in exercise of appellate jurisdiction by a Court subject to superintendence of the High Court;
>
> (e) A single judge of this Court hearing appeals under section 173 of the Motor Vehicles Act from awards of Claims Tribunal consequently does not deliver a judgment in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction;
>
> (f) It would, therefore, follow that such judgment of Single Judge would be subject to an appeal under Clause 15 of the Letters Patent."

78. With greatest respect, we are unable to contribute to the conclusions arrived at by the Bench as, in our opinion, it is not a correct exposition of law. *Inter alia,* we may notice the patent reasons for which we are unable to accept the law in *Asha Joshi*'s case (supra).

(a) Despite the fact that the judgment was pronounced on 12th December 2007, the judgment of the Supreme Court in *Kamal Kumar Dutta* (supra) decided on 11th August 2006, which has a direct bearing and to a large extent answers the controversies in issue was not brought to the notice of the Bench. The *ratio decidendi* stated in *Kamal Kumar Dutta* (supra) case being squarely applicable to the facts of the present case, would have been the correct precept for answering the questions of law.

(b) The Division Bench did not notice and interprete

the language of Section 100-A of the Code of Civil Procedure in relation to the cases where the appeals were filed subsequent to 1st July 2002.

(c) Clause 44 of the Letters Patent was not brought to the notice of the Bench so as to grant precedence to the provisions of Section 100-A even after the provisions of Clause 15 of the Letters Patent were attracted in the present case.

(d) The Bench treated the Motor Vehicles Act as a special law, however, no material was placed before the Bench to the effect that under the special statute the order passed by the Single Judge in exercise of its appellate jurisdiction under Section 173 was made appealable. In other words, no Second Appeal was provided under the Motor Vehicles Act.

(e) The Full Bench of the Madhya Pradesh High Court

in the case of *Laxminarayan* (supra) and this Court in the case of *Rahul Sharad* (supra) were primarily concerned with the retrospectivity and prospectivity of the provisions of Section 100-A which in fact already stand settled by the judgment of the Supreme Court in *Bento De Souza Egipsy vs Yvette Alvares Colaco*, **(2004) 13 SCC 438**, and *Kamla Devi* (supra) and the said provisions being prospective and appeals in the case before the Bench having been filed subsequent o 1st July 2002 and as such they will be covered by the provisions of Section 100-A of the Code.

(f) The view of the Division Bench that the Tribunal was neither a Civil Court nor had the trapping thereof, in our humble opinion, is not correct position of law in view of the well settled position of law as afore-noticed. The Tribunal has all the trapping of a Civil Court and its orders are

judgments or orders as even known in the common parlance. The learned Single Judge exercises powers of an appellate Court in terms of the Code of Civil Procedure while hearing an appeal preferred to that Court in terms of Section 173 of the Motor Vehicles Act. The Tribunal and particularly the appellate Court does not lose the trapping of a Civil Court while exercising such jurisdiction.

(g) The Division Bench placed heavy reliance upon the observations of the Supreme Court in the case of *Sharda Devi* (supra) stating that the provisions of Letters Patent were akin to the constitutional powers of the Court, but it was clarified and in fact not accepted by the Constitution Bench in *P.S. Satthapan's* case (supra) where the Court held as under :

"…. At this stage it must be clarified that during

arguments, relying on the sentence "the powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court" in para 9 of this judgment it had been suggested that a Letters Patent had the same status as the Constitution. In our view these observations merely lay down that the powers given to a High Court are the powers with which that High Court is constituted. These observations do not put Letters Patent on a par with the Constitution."

(h) In our considered view, the Division Bench while determining the controversy before it could have hardly relied upon the judgment of the Supreme Court in the case of *Jindal Vijaynagar Steel vs Jindal Praxair Oxygen Co. Ltd.*, **(2006) 11 SCC 521**, where the Supreme Court was primarily concerned with interpretation of Clause 12 of the Letters Patent of the Bombay High Court and Section 20 of the Civil Procedure code in relation to determination of jurisdiction. The question in that case related to the determination of Ordinary Original Civil Jurisdiction under the Letters Patent

Act in relation to a cause of action arising within the jurisdiction of the Court and on construction of Sections 20 and 120 of the Code read with Arbitration Act, 1940, it was held that the Court would exercise jurisdiction in terms of Clause 12 of the Letters Patent.

79. Another aspect, which needs to be examined by us, is that the Division Bench in *Asha's* case (supra) in paragraph 33 noticed another judgment of a Division Bench of this Court in the case of Bhenoy G. Dembla & Anr. vs M/s. Prem Kutir P. Ltd., reported in 2003(4) Mh.L.J. 883, where the Division Bench had taken the view that keeping in view the provisions of Section 100-A of the Code of Civil Procedure and Section 10F of the Companies Act, 1956, an appeal from the judgment of the learned Single Judge in exercise of its appellate jurisdiction under Section 10-F of the Companies Act would not lie after 1st July, 2002. The Bench held that :

> "..... There is no express conferment of a right of a further appeal to the Division Bench against the decision of a learned Single Judge. That being the position, an appeal to the Division Bench is clearly not maintainable against the decision of the Single Judge rendered after 1st July, 2002."

80. In our view, the most appropriate course of action in consonance with the judicial propriety and discipline would have been that the Division Bench dealing with *Asha's* case (supra) should have referred the matter to a larger Bench rather than expressing the contrary view to that of equi bench judgment in *Bhenoy G. Dembla's case (supra)* which had been pronounced much earlier. Be that as it may, we would leave the matter at that stage and proceed to discuss paragraph 33 of the judgment in *Asha's* case (supra) where the Bench distinguished the judgment in *Bhenoy G. Dembla's case (supra)* that the proceedings in that case had arisen from the provisions of Section 10-F of the Companies Act. The Division Bench in *Asha's case (supra)* had referred to earlier Division Bench Judgment of this Court in the case of *Maharashtra Power Development Corporation Limited's case (supra)* which

had taken the contrary view and held that the judgment of Company Court pronounced in the appeal under Section 10-F of the Companies Act would not be a judgment and decree within the meaning of the provisions of the Code of Civil Procedure, and therefore, the appeal was not barred in terms of Section 100-A of the Code of Civil Procedure. The Division Bench in Asha's case (supra) ignored the fact that the view of the Division Bench of Bombay High Court in *Maharashtra Power Development Corporation Limited's case (supra)* was not approved by the Supreme Court in *Kamal Kumar Dutta's case (supra)*, and in fact, diametrically opposite view has been expressed by the Supreme Court which we have already discussed in some detail. It was expected from the learned counsel appearing for the respective parties to bring these judgments to the notice of the Division Bench, which, if brought, we have no doubt in our mind that the Bench would have come to a different conclusion and preferably to the one indicated above.

81. It is a settled norm of interpretation of statute that the

enactment should be examined in its entirety and the Court essentially are considering the legislative scheme and object and intent of the Legislature even while applying the rule of plain interpretation. Reference to one or two odd provisions of the Act, Code or Rules framed under that Act may not thus sufficiently satisfy the requirements of law. We have discussed in some elaboration the various provisions of the Civil Procedure Code that have been made specifically applicable to the Motor Vehicles Act. The functions and powers of the Tribunal in the process of determination are controlled by the specific provisions of the Code of Civil Procedure as indicated in Section 169 of the Motor Vehicles Act and Rules 257 and 276 of the Maharashtra Motor Vehicles Rules framed under the Motor Vehicles Act. It has to entertain an application filed under Section 165 of the Act and has to exercise its adjudicatory powers required for the purpose permitting to file reply, give hearing and adequate opportunity to prove its case, then hear the arguments and decide the claim petition in accordance with law. The entire adjudicatory process is thus primarily and substantially controlled by the provisions of the

Code. It is difficult for us to come to the conclusion that the Tribunal is not having the trapping of Civil Court. Technically or grammatically speaking, the Tribunal may not be a Civil Court, but it has all the trapping of the Court and it pronounces an Award which is determination of rights of parties and which has all the ingredients of a judgment and an order as known under civil jurisprudence.

82. Now, we will proceed to deal with the judgment of the Supreme Court relied upon by the appellants. Heavy reliance was placed on the judgment in *Subal Paul's* case (supra) where the Supreme Court, while dealing with the provisions of Section 299 of the Succession Act, observed that this was not governed by Section 104 of the Code of Civil Procedure and against the order passed by the learned Single Judge in exercise of that jurisdiction, letters patent appeal would lie. Firstly, the provisions of Section 100-A of the Code of Civil Procedure are not the subject matter of discussion in this case. Secondly, the appeal before the learned Single Judge had been filed prior to coming into force the provisions of Section 100-A of the Code

i.e. 1st July, 2002. The Supreme Court was primarily concerned with the interpretation of sub-section (2) of Section 104 and held that, that provision will not bar a remedy which otherwise is provided under any other law. We may find it necessary to refer to at this stage itself that the provision of Section 104 unlike the provision of Section 100-A of the Code of Civil Procedure does not contain any non obstante clause or legislative exception. In paragraph 20 of the judgment, the Supreme Court has specifically noticed that the provisions of Section 104 does not contemplate order or decree passed under a special statute and thus the restrictions carved out under Section 104 would not prohibit an appeal in terms of Section 299 of the Succession Act. The real catchword of the judgment of the Supreme Court in this case is: -

> "20. By reason of Section 104 of the Code of civil Procedure the bar of appeal under a special statute is saved. A plain reading of Section 104 of the Code of Civil Procedure would show that an appeal shall lie from an appealable order and no other order save as otherwise expressly provided in the body of this Code of or by any law for the time being in force. Section 104 of the Code merely recognises appeals provided under special statute. It does not create a right of appeal as such. It does not, therefore, bar any further appeal also, if the same is

> provided for under any other Act, for the time being in force. Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100A of the Code of Civil Procedure."

83. This judgment, in our opinion, does not support the case of the Appellants but the very pertinent feature of this judgment is that the Supreme Court has clearly held that an order passed by the High Court under Section 299 of the Succession Act is a judgment, if not a decree, observing that -

> ".....Whenever the statute provides such a bar, it is so expressly stated, as would appear from S. 100 A of the Code of Civil Procedure. If a right of appeal is provided for under the Act, the limitation thereof must also be provided therein. A right of appeal which is provided under the Letters Patent cannot be said to be restricted. Limitation of a right of appeal, in absence of any provision in a statute cannot be readily inferred."

84. These dicta of the Supreme Court have not been noticed by the Division Bench in Asha's case (supra). Reliance was also placed upon a judgment of the Supreme Court in *Sharada Devi's case (supra).*

In that case, the Supreme Court was concerned with an appeal to a Division Bench against the judgment of a learned Single Judge of the High Court as in terms of Section 54 of the Land Acquisition Act. The Court noticed that the expression "only" occurring in Section 54 after non obstante clause refers to forum of appeal i.e. an appeal would lie to the High Court, and not to any other Court and appeal would take within its sweep Letters Patent Appeal, while noticing that Section 54 does not specifically excludes the provisions of the Letters Patent. The Court specifically noticed that the right to entertain appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent. The language of Section 100-A of the Code of Civil Procedure specifically excludes the application of the Letters Patent. As already held by the Constitution Bench of the Supreme Court, the Letters Patent is not akin to constitutional powers. We may also notice here that the judgment of the Supreme Court in *Sharada Devi's case (supra)* was pronounced on 13th March, 2002 i.e. prior to 1st July, 2002 when the provision of Section 100-A of the Code of Civil Procedure was added and none of the contentions which we

have considered above were raised before the Supreme Court. In these circumstances, again this judgment is of no help to the appellants.

85. It is always not possible to state the legal proposition and answers to them with absolute precision. Still the Court makes attempt to answer the proposition of law accurately and adequately, with reference to the material facts as well as the points to be decided. The Courts are guided by the written laws, which they interpret and develop a meaningful set of rules by the process of case by case adjudication. The reasons for deciding the earlier case have been provided as the guidelines for future decision. We have attempted to cull out the reasons for taking the view that we have taken above. "*Experientia docet"* and "*Expedit rei publicae ut sit finis litium"* are the two accepted maxims which are equally applicable to the interpretation of statutes. We have to keep in mind the intent of the Legislature that in no uncertain terms, it decided to put an end to intra-Court appeal by debarring entertainment of the second appeal

where the learned Single Judge of the High Court has pronounced an order or judgment in exercise of its appellate jurisdiction. In terms of Section 100-A of the Code of Civil Procedure, the unambiguous and definite expressions in Section 100-A of the Code of Civil Procedure clearly demonstrate this legislative intent. Clause 15 read with Clause 44 of the Letters Patent would squarely fall within the sweep of provisions of Section 100-A of the Code, which specifically by definite language excludes the provisions of the Letters Patent. There is no provision in the special i.e. M.V. Act providing further appeal against the appellate judgment passed by the learned Single Judge under Section 173 of the M.V. Act.

86. Thus, we proceed to record and answer propositions of law formulated by us in paragraph 5 of the judgment as follows:

(a) Upon amendment of Section 100-A of the Code of Civil Procedure by Amending Act of

2002 with effect from 1st July, 2002, no Letters Patent Appeal would be maintainable against the judgment rendered by the learned Single Judge of the High Court under the provision of Section 173 of the Motor Vehicles Act, 1988.

(b) Appeal against the judgment of the learned Single Judge in exercise of its appellate jurisdiction under Section 173 of the Motor Vehicles Act, 1988 even with the aid of Clause 15 of the Letters Patent is not maintainable, and in fact, in both these situations, the appellate court would have no jurisdiction to entertain and decide such an appeal.

87. Having answered the above questions of law, and in view of the fact that the Appeals themselves have been placed for decision

before this Bench, we have no hesitation in holding that these appeals are not maintainable. Consequently, both these Appeals are dismissed. However, in the facts and circumstances of the cases, the parties are left to bear their own costs.

CHIEF JUSTICE

P.V. HARDAS, J.

N.D. DESHPANDE, J

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