

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

Mohd. Rivazur Rehman Siddiqui

Mr P R Tandale, Advocate for Respondent.

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

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J	,
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 Sa	abnis for
the Appellant.	
Mr N B Khandare, Government Pleader, for St	ate.

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	(Org. Ciamiants)
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

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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.

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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



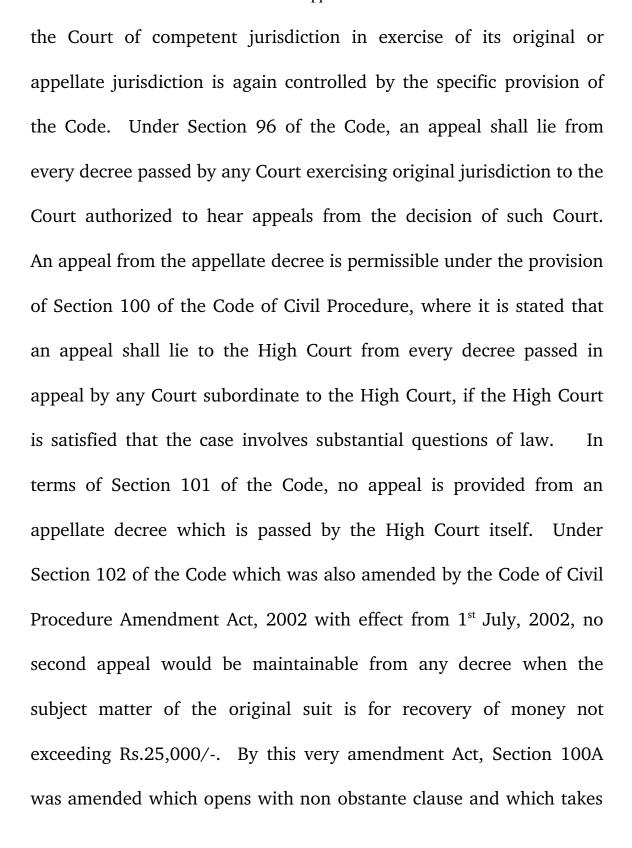
formulate the questions which are likely to arise repeatedly before the Court and even otherwise are questions of law of some significance as under:-

- (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

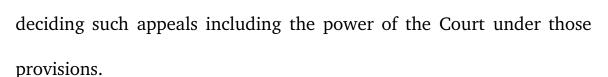


- The language of Section 4 of the Code of Civil Procedure is 7. specific but still of wide connotation and impact. It contemplates that in absence of any specific provision to the contrary nothing in the Code shall be deemed to limit or otherwise affect any special or local law, special judicial jurisdiction 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



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



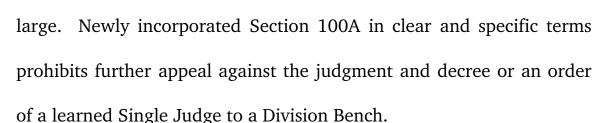
10. will be appropriate to examine the legislative amendment to the Code of Civil Procedure. The Code of Civil Procedure, 1882 was replaced by Code of 1908. However, Section 100A was introduced for the first time by amending Act 104 of 1976. The intent was to bar third appeal before a Division Bench of the High Court from a judgment of the Single Judge deciding a matter in a By the amending Act of 1999, the earlier Section Second Appeal. 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."

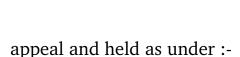
11. design behind frequent amendments of these The provisions is obvious. Legislative attempt has been to reduce the number of Appeals which a litigant could prefer against an original or appellate decree. Where the Single Judge hears an appeal from an appellate decree or order, the question of there 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



- 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

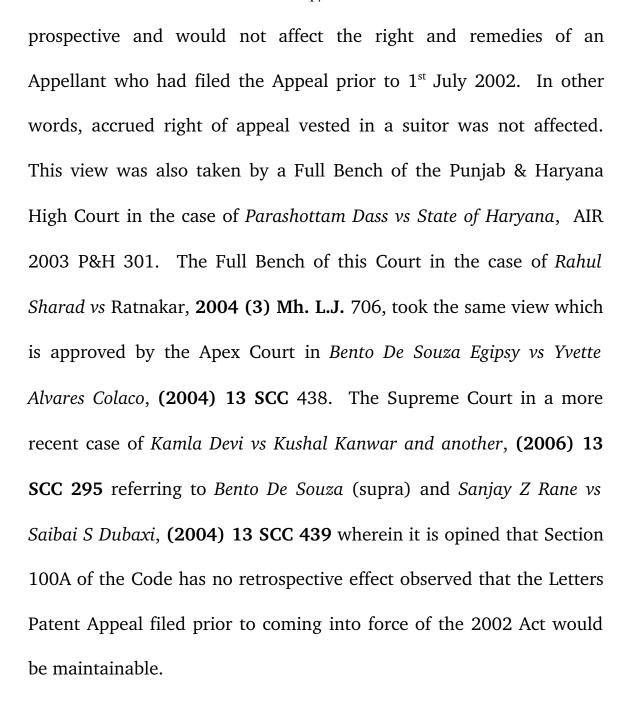


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"15. Section 100-A deals with two types of cases which are decided by a single Judge. One is where the single Judge hears an appeal from an appellate decree The question of there being any further appeal in such a case cannot and should not be contemplated. 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 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 No fault can, thus, be found with the first appeal. amended provision Section 100-A."

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



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

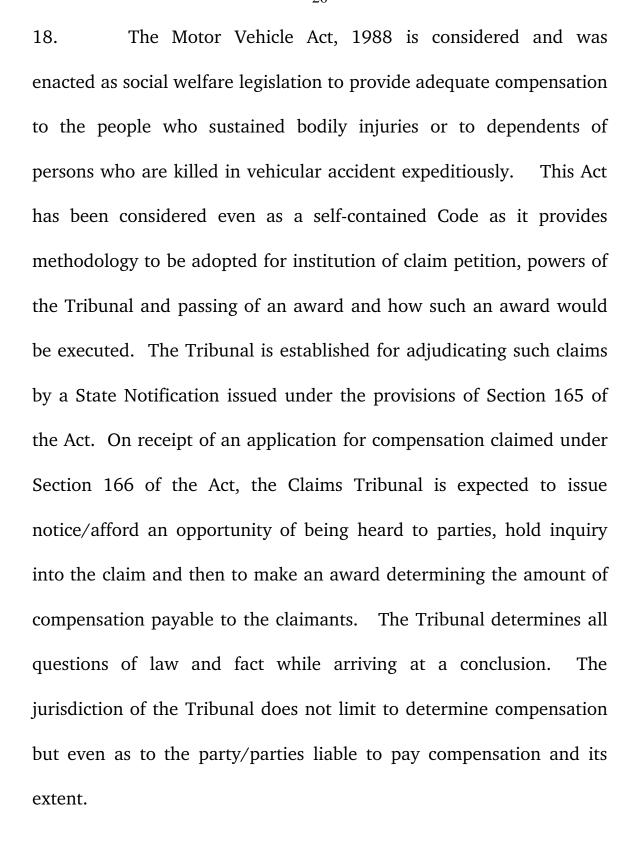


provided expressly or by necessary intendment and not otherwise.

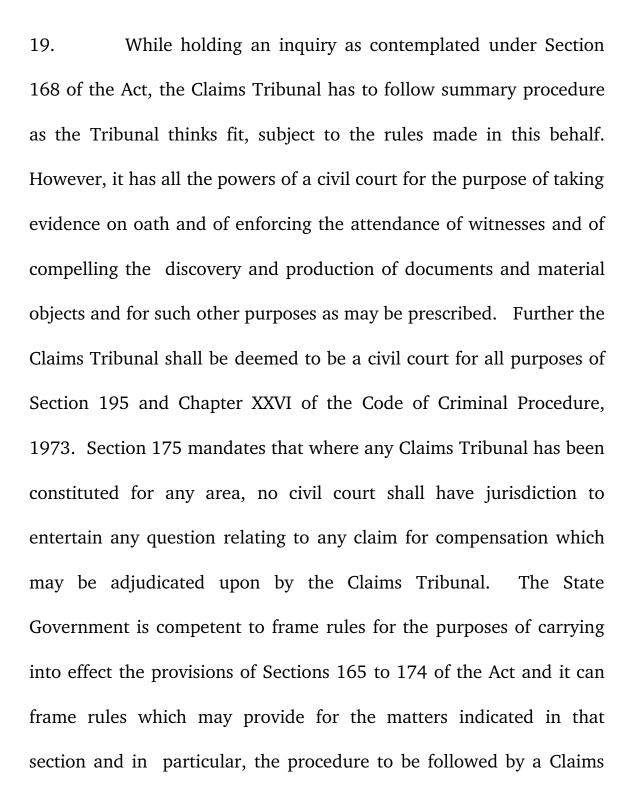
- 16. The Supreme Court in the case of *Garikapati Veeraya vs N Subbiah Choudhry,* **AIR 1957 SC 540**, spelt out the five propositions as precepts to right of appeal. The formulated propositions read as under:-
 - (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but 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

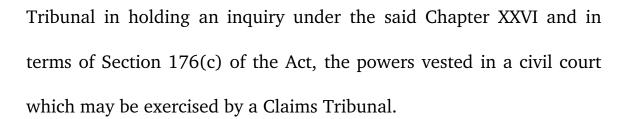


- or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
- (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.
- Once the Legislature 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.

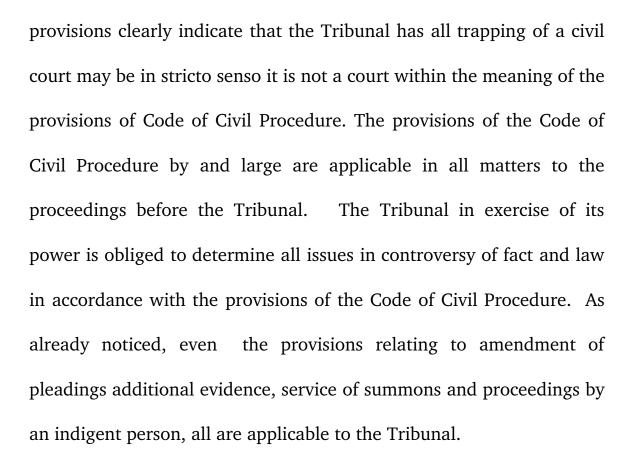


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20. In exercise of its power vested in it under Section 176, the State of Maharashtra has framed rules known as "Maharashtra Motor Vehicles Rules, 1989" and Rules 275 and 276 thereof deal with the powers of a civil court which may be exercised by Claims Tribunal and the procedure to be followed by a Claims Tribunal in holding inquiries The Tribunal is fully empowered to exercise powers respectively. 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 Some of the other provisions of the Code of Criminal Code. 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, also applicable to the proceedings before the Tribunal. These



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



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findings based upon those questions of law and fact."

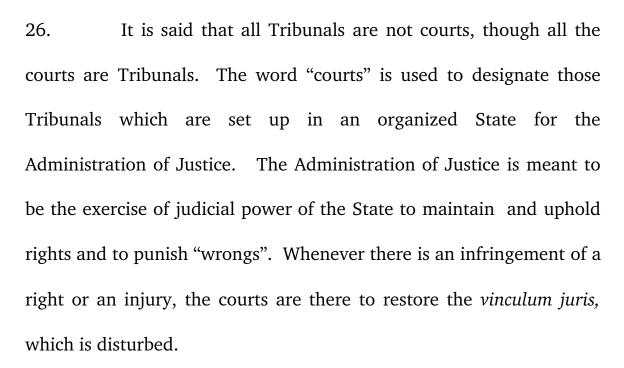
23. The Court also stated that in deciding whether the authority required to act judicially when dealing with the matters affecting the rights of citizens may be regarded as a Tribunal, though not a court, the principal incident is the investiture of the "trappings of a court", - such as authority to 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.

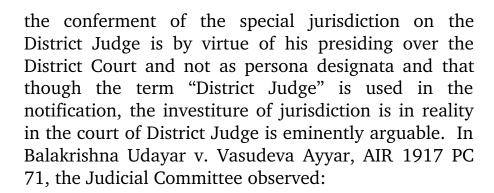
25. More so, in the case of *State of Haryana vs Smt. Darshana Devi & Ors.*, reported in **(1979)2 SCC 236**, the Supreme Court, while dealing with a case under the provisions of Motor Vehicles Act, 1939, stated that as under:-

"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."



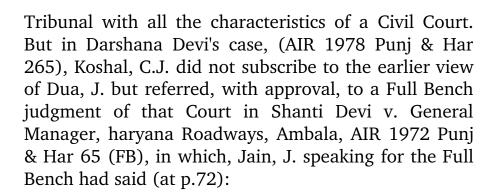
27. In addition to the above general principles, some of the courts have taken a specific view stating the principle that the Tribunal constituted under the M.V. Act is a court subordinate to the High Court in terms of Section 24 of the Code of Civil Procedure, The Karnataka High Court in *Mrs. Noreen 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,



"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



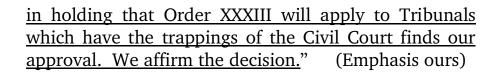
"The proceedings before the Claims Tribunal closely resemble the proceedings in a Civil Court and to use the language of their Lordships of the Supreme Court in Jugal Kishore's case AIR 1967 SC 1494, the Claims Tribunal for all intents and pruposes discharges the same functions and duties in the same 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

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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.

However, Bhagwati Devi's case (1983 Acc CJ 10. 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. 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 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



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:-

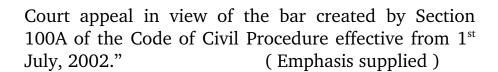
"There is no two opinion in the matter that when the CLB exercises its power under Ss.397 & 398, it exercised a quasi-judicial power as the original authority. It may not be a Court but it has all trapping of a Court."

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

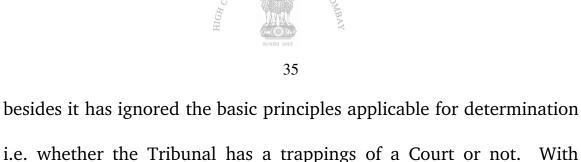


& etc. etc. vs Vaibhav Kumar & Ors., reported in AIR 2007 Rajasthan 147, held as under:-

"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 If the Company Law Board Courts and Tribunals. constituted under the Companies Act 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-



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,



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: -

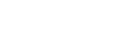
respect, we are unable to follow the view taken by a Division Bench in

that case in this regard.

"173. Appeals: (1) Subject to the provisions of subsection (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:

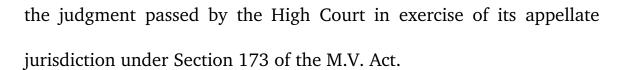
Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court;

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

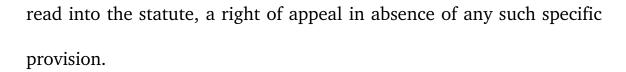


appeal in time.

- (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



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 The right to appeal and in fact all remedial intra-Court appeal. 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



NATURE OF RIGHT OF APPEAL:

According to Salmond, (Salmond on Jurisprudence, 35. 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 that they deserve to be examined by themselves. legislation 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

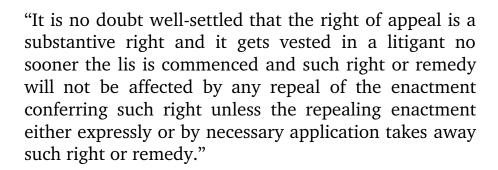


- 37. In the case of *Garikapati Veeraya* (supra), the Supreme Court in unambiguous terms stated the principle that right of appeal is a vested right which is created by a statute alone. This was reiterated by the Supreme Court in a more recent judgment and was followed with approval in *Kamal Kumar 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

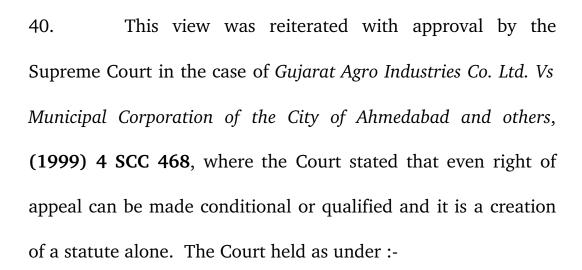
 Amria Zurana Pereira Pinto and others, (1979) 1 SCC 92, the Supreme

 Court held as under:-

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- 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."



"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).

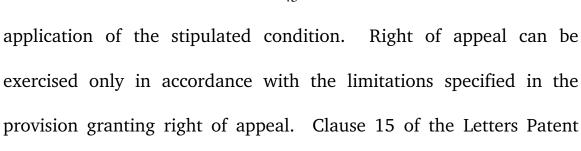
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- 41. Right of appeal is neither a natural nor inherent right vested in a party. It is substantive statutory right regulated by the statute creating it. (*Kondiba Dagadu Kadam vs Savitribai Sopan Gujar and others*, (1999) 3 SCC 722, and *Kashmir Singh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

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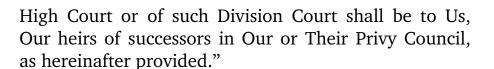


- 43. It has been held that Letters Patent is a word of definite legal meaning. It is derived from the latin words *literae patents*. The Letters Patent are so called because they are open letters, they are not sealed up, but exposed to view, with the great seal pendant at the bottom and are usually 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).
- A4. 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



reads as under :-

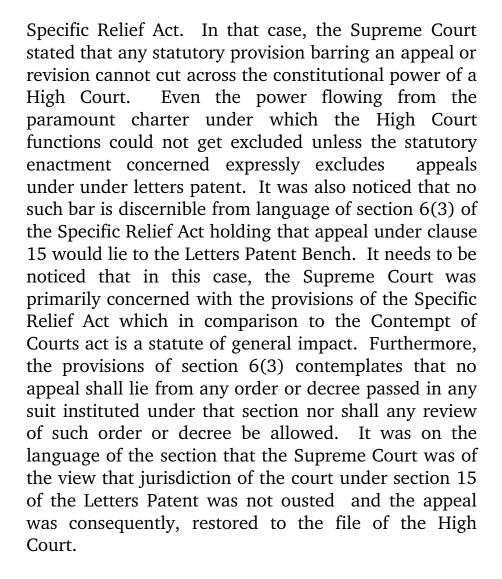
"15. Appeal to the High Court from Judges of the Court: And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High 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



Clause 15 of the Letters Patent is the provision which 45. 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

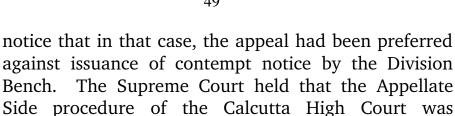
prefer an appeal from the judgment of the learned Single Judge thus is not a unrestricted or unfettered right. Besides the requirement that the order of the learned Single Judge as understood in common parlance has to be a judgment within the meaning of the said expression of clause 15 of the Letters 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 delivered on 19th June, 2008 (The Bombay a recent judgment 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

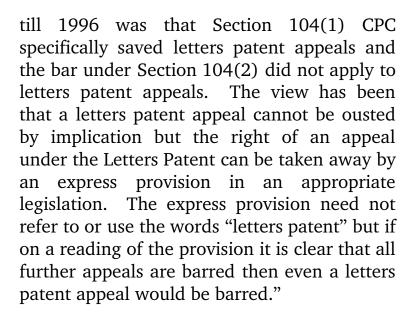


11. Similarly, in the case of *State of West Bengal and others v. Kartick Chandra Das and others*, (1996) 5 SCC 342, the Supreme Court again emphasised the principle that in absence of specific exclusion, the provisions of sections 4 to 24 and section 5 of the Limitation Act were applicable to the appeals 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

applicable.



- 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



- 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:

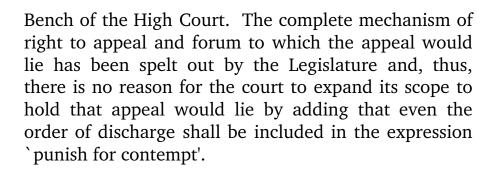
- "19. Appeals.- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-
- (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
- (b) where the order or decision 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.



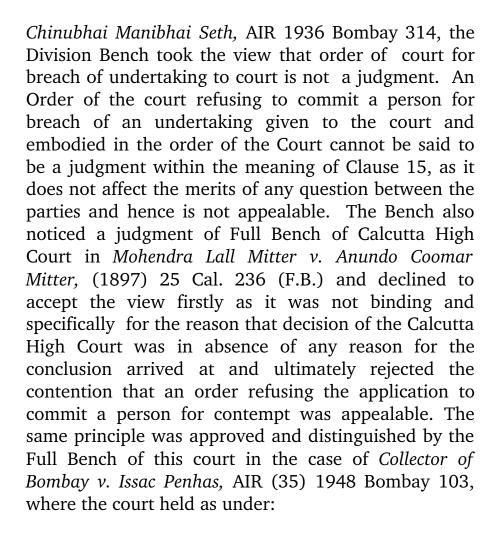
- (3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intents to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).
- (4) an appeal under sub-section (1) shall be filed-
- (a) in the case 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.
- The language of section 19 where gives a 15. 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. 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". 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. 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



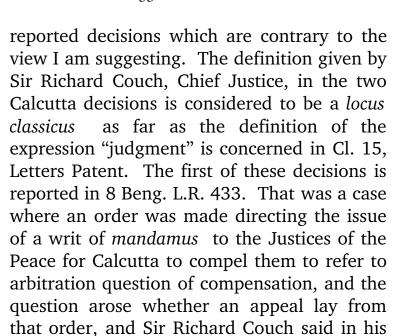
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The appeals are filed against a decree or an 18. order which is determination of a lis in accordance with law. The appeal would lie against such order or decree with the exception that such order or decree was not made in exercise of appellate jurisdiction. 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. 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.



"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



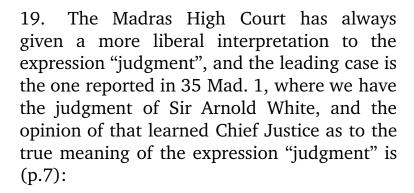
"We think that 'judgment' in Cl.15 means a decision which affects the merits of the question between the parties by determining some right or liability."

judgment (p. 452):

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."

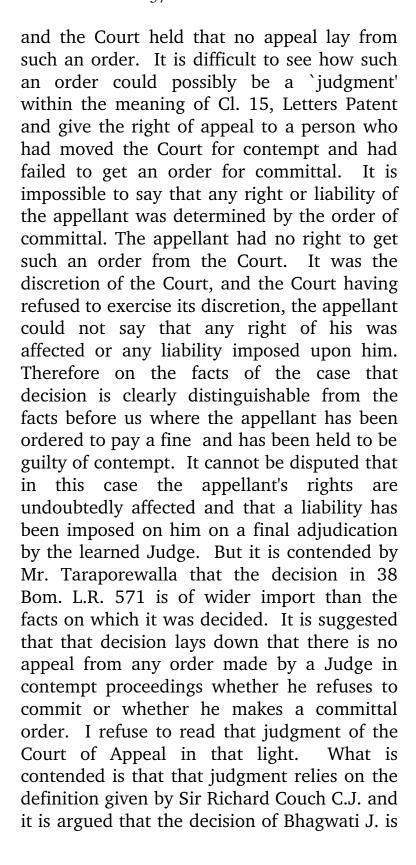
In that case the learned Chief Justice was considering an order refusing to set aside an order granting leave to sue to the plaintiff under Cl.12, Letters Patent.

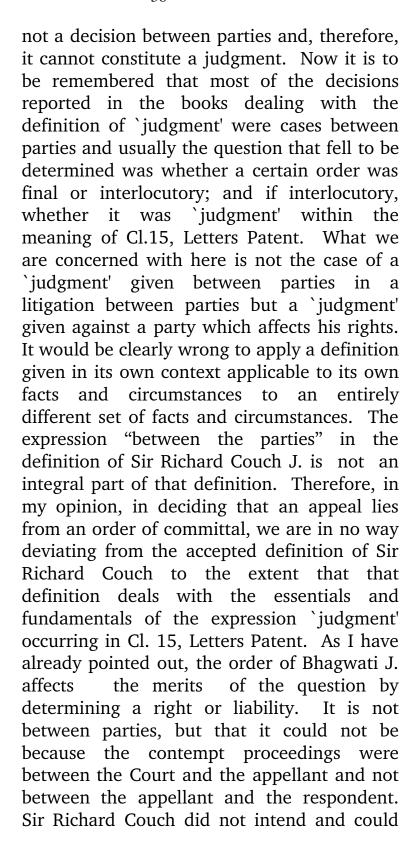


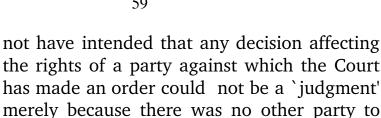
"If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to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







those particular proceedings."

The expression "judgment" was examined by the 23. 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

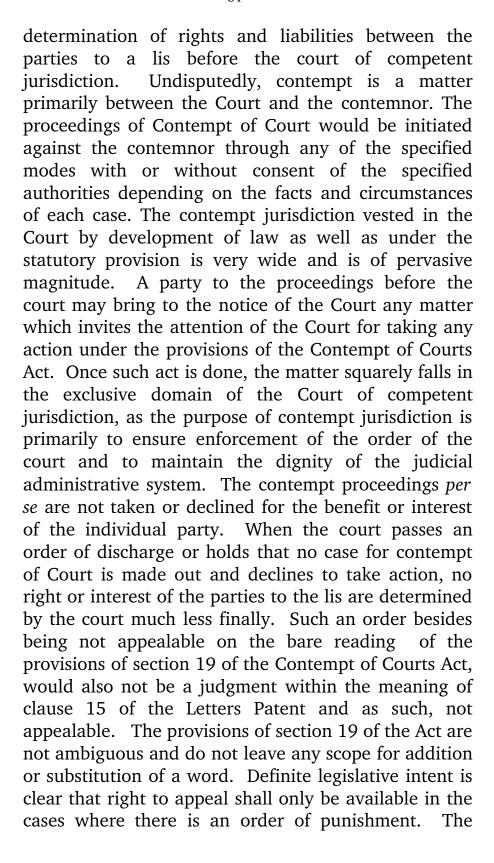


decides an important aspect of the trial and which affects the vital right of the defendants would be liable to be construed as judgment.

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 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.

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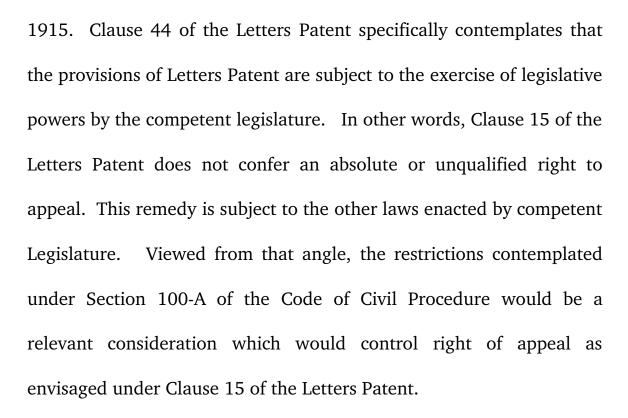
- 28. Judgment by the court is an affirmation of a relation between the particular predicate and a particular subject. It is always a declaration that a liability, recognised as within the jural sphere, does or does not exist. A judgment, as the culmination of the action, declares the existence of the 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





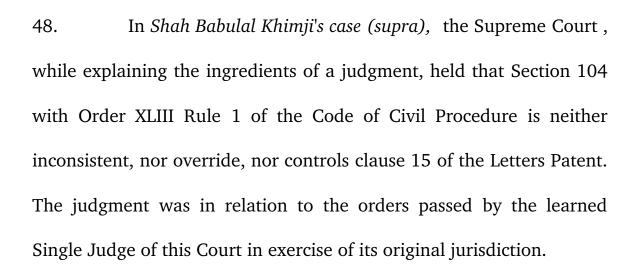
matter primarily and substantially being between the court and the contemnor, parties to the lis cannot be permitted to raise issues or litigate on the view of the court that a case of contempt is made out or not. Where the court in exercise of its judicial discretion and keeping in mind the well settled 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."

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,

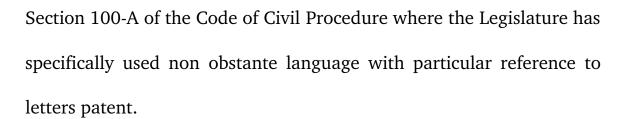


47. Clause 12 of Letters Patent is an independent clause which relates to the exercise of ordinary original jurisdiction in suits by this Courts. The orders which are passed by the High Court in exercise of its original jurisdiction would be apparently covered under clause 12 of the Letters Patent but 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.

RT OF JUDICATURE



- 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



INTERPRETATION OF STATUTES:**

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.

^{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.

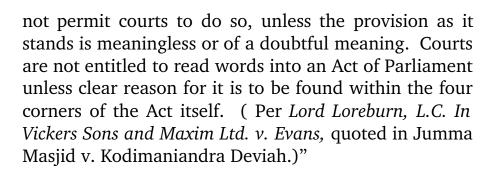


The Supreme Court in the case of *Shiv Shakti Co-op*.

Housing Society, Nagpur vs Swaraj Developers and Others, reported in

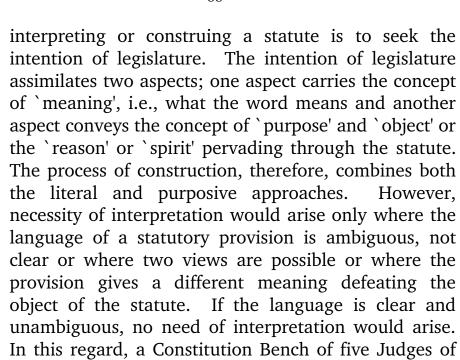
(2003) 6 SCC 659, while referring to the principles for interpretation of statutory provisions, held as under: -

"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 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 The intention of the legislature is Waterhouse.) 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



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



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 RT OF JUDICATURE A

provisions."

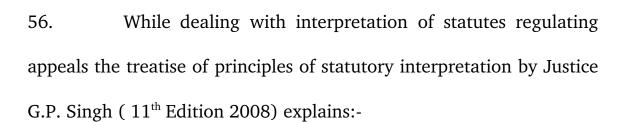
Above stated principles clearly show that the Court can 54. safely apply rudiments of plain construction to legislative intent and object sought to be achieved by the enactment while interpreting the provision of an Act. It is not necessary for the Court to implant or exclude words or over emphasize 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 The enactment following it will have its full case of conflict. 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."

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.



"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."

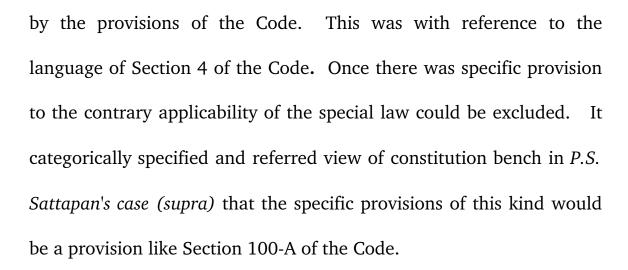
57. In the case of *A.G. Varadarajulu & Anr. vs State of T.N. & Ors.*, reported in **(1998) 4 SCC 231**, the Supreme Court held as under: -

"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."

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

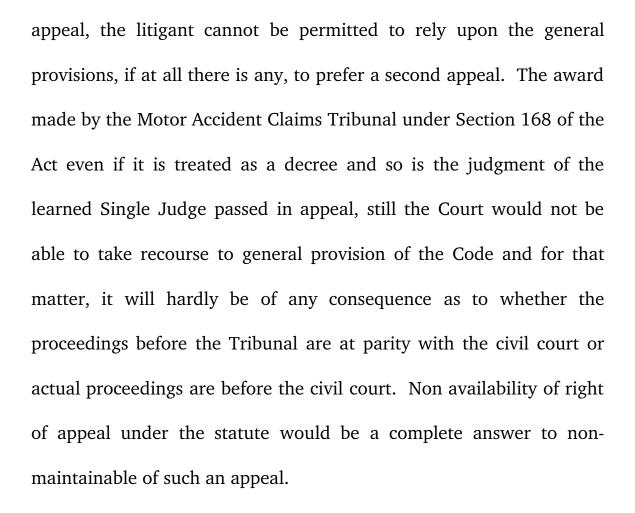


59. On the clear analysis and application of judicial interpretative process, it is clear that Section 100-A of the Code of Civil Procedure and the Clause 15 of the Letters Patent would have to be construed on their plain reading and without any conflict.

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. absence of any provision granting such statutory right to prefer second

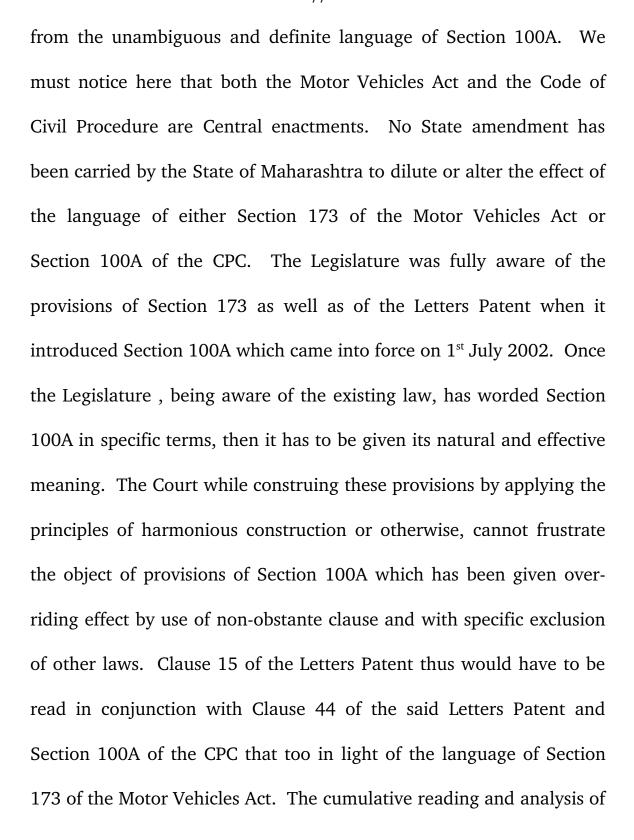


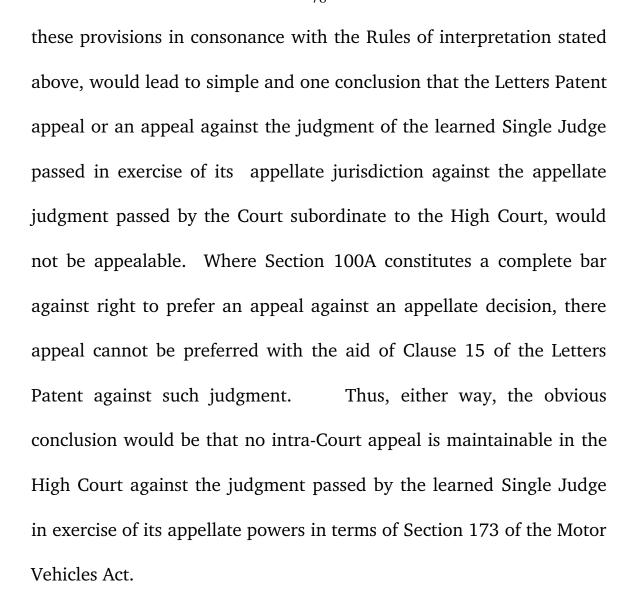
61. Section 173 of the Motor Vehicles Act provides only for a restricted right of appeal and the same cannot be stretched by interpretative process to hold that even a second appeal or an appeal against the appellate jurisdiction of the Single Judge would be maintainable. This would obviously be an interpretation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

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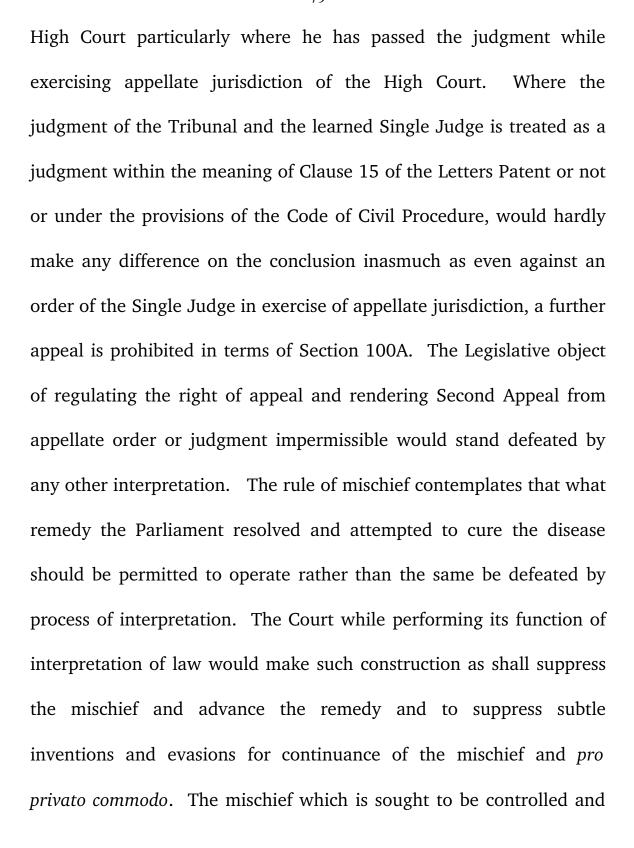
plain reading of the Section.

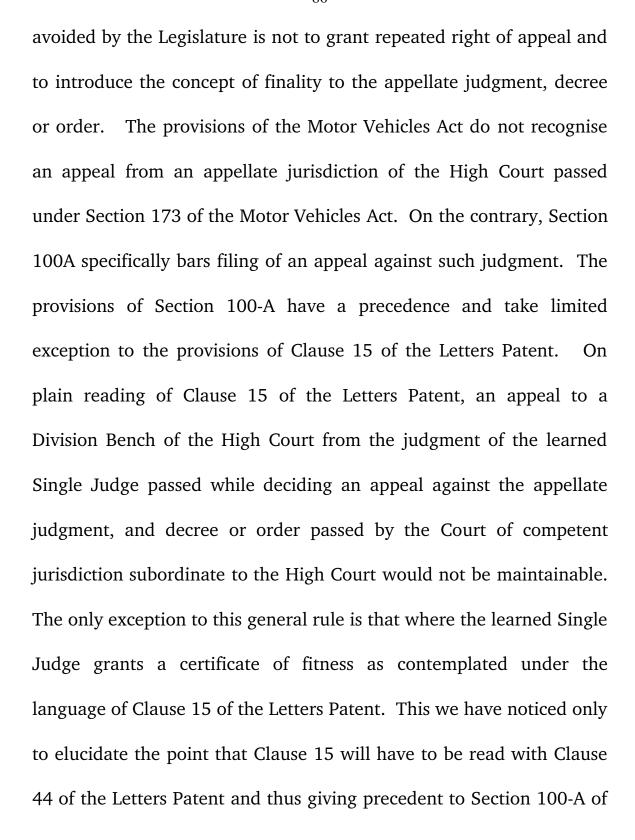
62. We have already noticed that the Tribunal has the trapping of a Civil Court and various procedural and effective provisions of the Code of Civil Procedure have been made applicable substantially to the proceeding before the Tribunal. After the Award is passed by the Tribunal, an Appeal under Section 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 Section 100A was introduced by the Code of Civil Procedure. 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

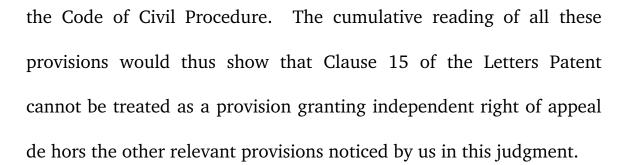




Another aspect which would support the view which we are taking is that the whole object of introducing Section 100A was to curtail litigation by regulating the right of appeal. Attempt obviously is to attach finality to the judgment of the learned Single Judge of the







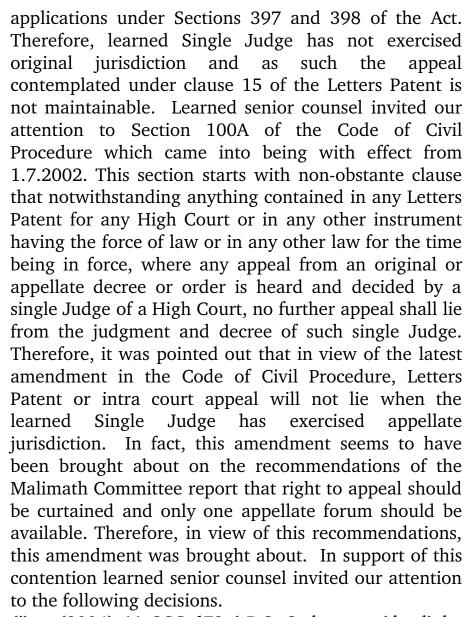
- 64. The Supreme Court in the case of *P S Sathappan* (supra) clearly stated while referring to Clause 44 of the Letters Patent that provisions of Letters Patent were subject to legislative powers of the Governor-General-in-Legislative Council and, therefore, in the present-day context, subject to legislative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

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- (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 of the Companies commencement 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.

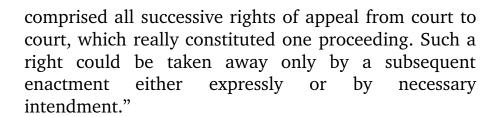
But after the amendment the power which was being exercised under Sections 397 & 398 of the Act by learned Single Judge of the High Court is being exercised by the CLB under Section 10E of the Act. Appeal against the order passed by the CLB, lies to the High Court under Section 10F of the Act. Therefore, 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.

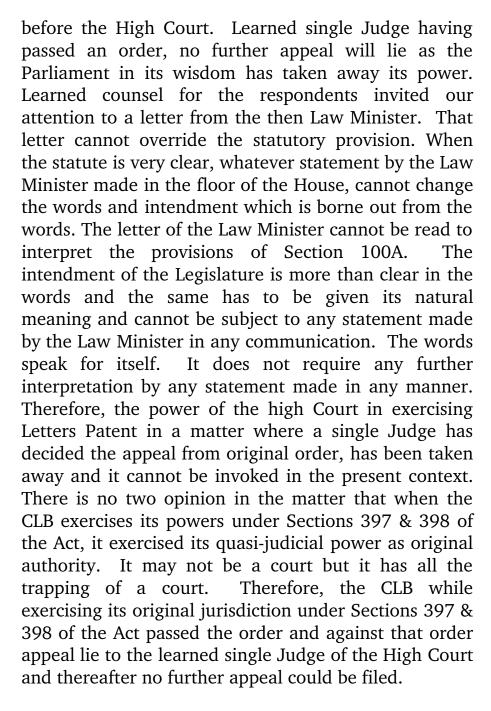
The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and



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

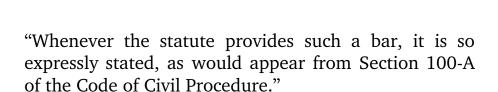


18. In this connection, our attention was invited to a decision in the case of Arati Dutta vs M/s Eastern Tea Estate (P) Ltd. reported in (1988) 1 SCC 523. This was a case in which the power was exercised by learned single Judge under Sections 397 & 398 of the Act and



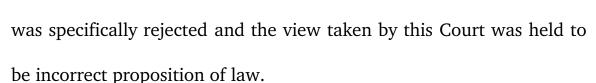
against that order appeal lay to the Division Bench of the High Court under Section 483 of the Act. In that context, their Lordships observed that mere absence of procedural rules would not deprive the litigant's of substantive right conferred by the statute. We have already explained above that earlier 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:

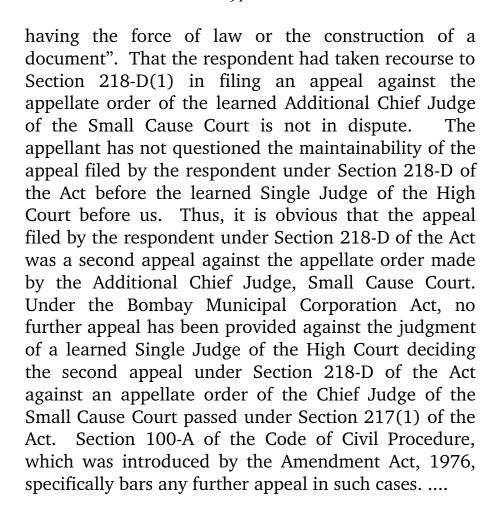


Motor Accident Claims Tribunal which has all the trapping of a Civil Court, discharges its judicial functions subject to the superintendence and control of the High Court. In fact, the High Court being its appellate Court, would exercise all the control over the Motor Accident Claims Tribunal.

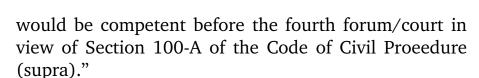
68. It can be useful to notice at this stage itself that in *Kamal Kumar* Dutta (supra), the view taken by a Division Bench of this Court in the case of *Maharashtra Power Development Corporation Limited vs Dabhol Power Company and others*, (2003) 117 Company Cases 651 = AIR 2004 BOM 38, that appeal 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,



- 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



This section has been introduced to minimise the 10. 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

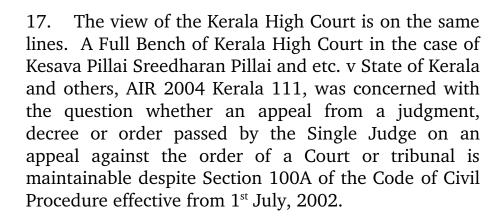


- 70. At this stage, even at the cost of repetition, we may notice that the provisions of Section 173 of the Motor Vehicles Act provide for an appeal against the Award of the Tribunal specifically and do not contemplate any further appeal. Thus, the statute does not specifically provide for any further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

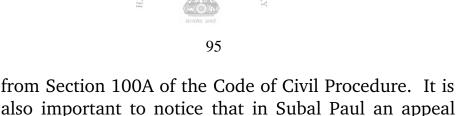


provisions including a view of Full Bench of the Andhra Pradesh High Court in the case of *M/s United India Insurance Co. Ltd. vs. S. Surya Prakash Reddy and another*, **2006 (4) Andh L T 448,** The Court held as under:-

"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.



- 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



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):

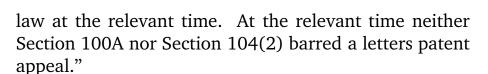
was preferred before the Division Bench from the order

of the Single Judge prior to 1st July, 2002.

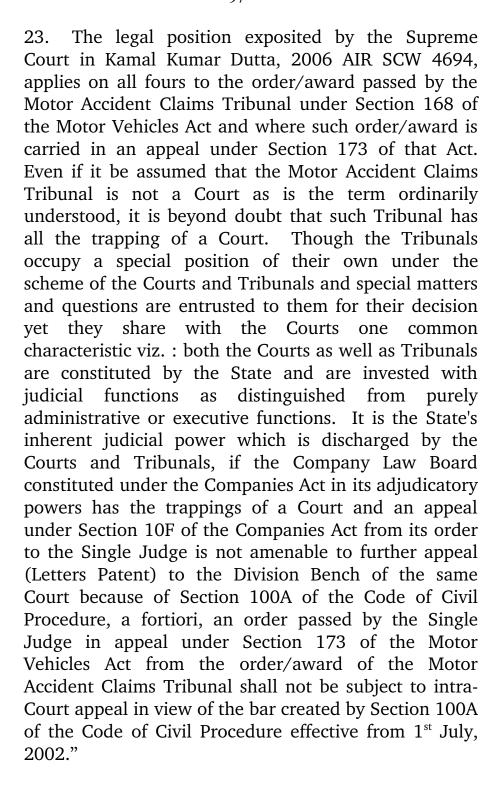
"It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of 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.

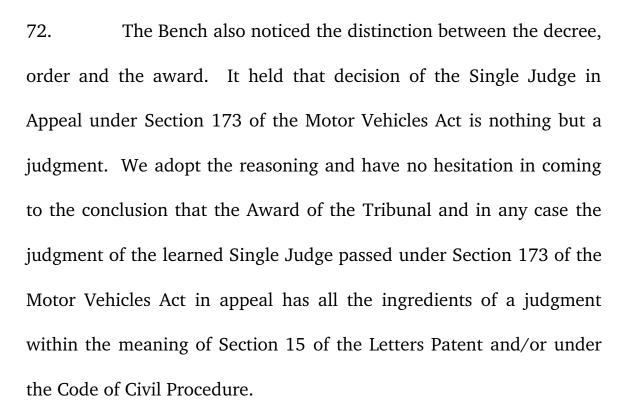
"100-A:

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



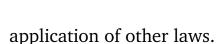
- 21. The recent decision that squarely concludes the controversy is the decision of the Supreme Court in the case of Kamal Kumar Dutta, 2006 AIR SCW 4594. That was a case where the Company Law Board passed order under Sections 397 and 398 of the Companies Act. An appeal was filed before the High Court 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.



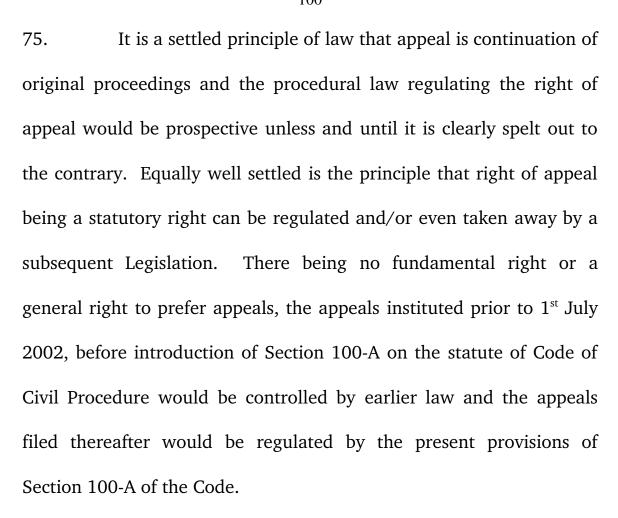


73. The provisions of Letters Patent, being a special law, as opposed to Civil Procedure Code which would be generally applicable to all Courts, would have normally taken precedence and regulated the right to file an appeal, but for the non-obstante clause and specific exclusion of its application in 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

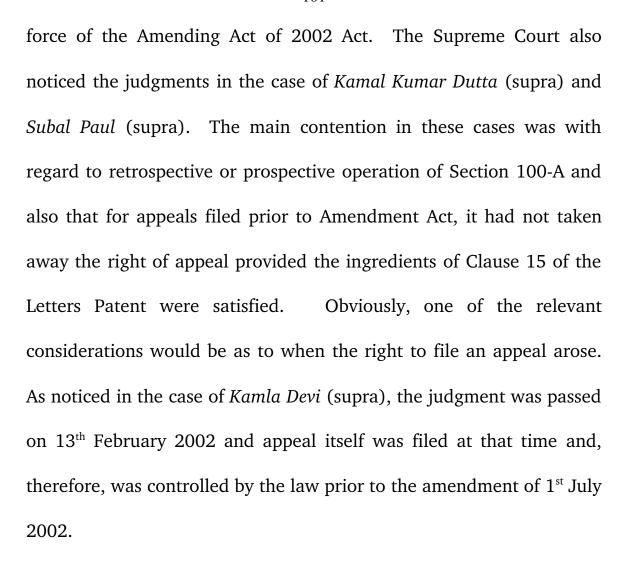
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74. We have discussed in some elaboration, the reasons for arriving at a conclusion that the Letters Patent Appeal against the appellate judgment passed in exercise of powers conferred on the court under Section 173 of the Motor Vehicles Act is not 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.



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



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

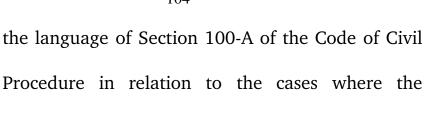


Reference. In paragraph 40 of the said judgment, the Bench concluded as under:-

- "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."

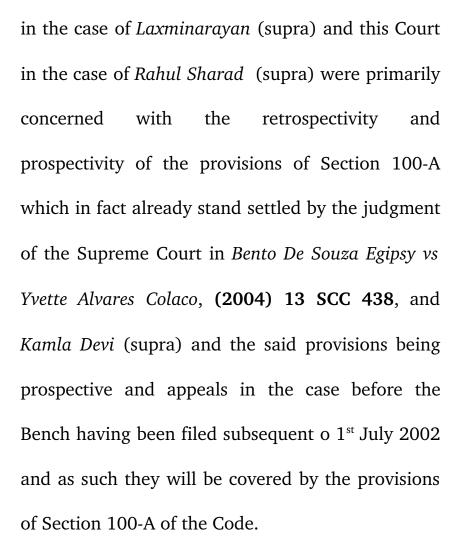


- 78. With greatest respect, we are unable to contribute to the conclusions arrived at by the Bench as, in our opinion, it is not a correct exposition of law. *Inter alia*, we may notice the patent reasons for which we are unable to accept the law in *Asha Joshi*'s case (supra).
 - (a) Despite the fact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



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



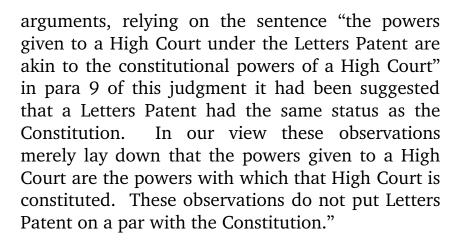
(f) The view of the Division Bench that the Tribunal was neither a Civil Court nor had the trapping thereof, in our humble opinion, is not correct position of law in view of the well settled position of law as afore-noticed. The Tribunal has all the trapping of a Civil Court and its orders are



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



(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



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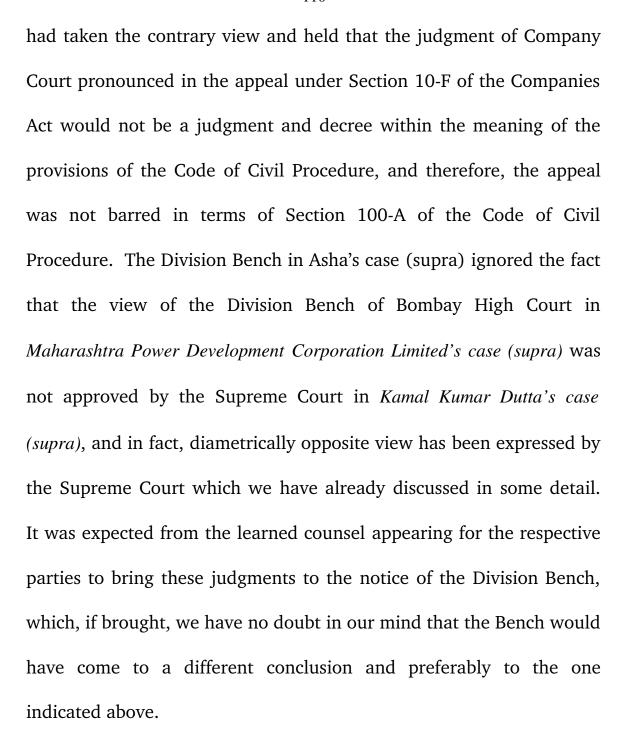
Act in relation to a cause of action arising within the jurisdiction of the Court and on construction of Sections 20 and 120 of the Code read with Arbitration Act, 1940, it was held that the Court would exercise jurisdiction in terms of Clause 12 of the Letters Patent.

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:

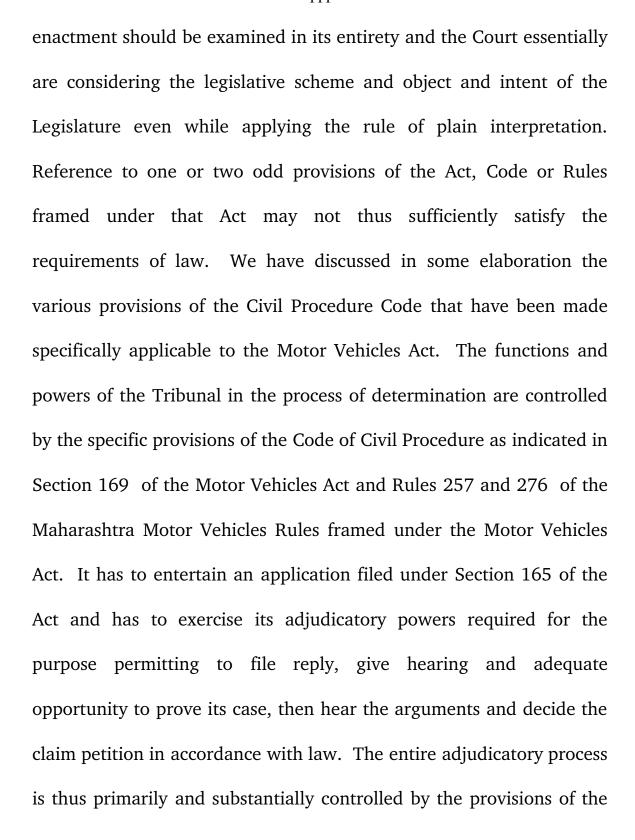


"........ There is no express conferment of a right of a further appeal to the Division Bench against the decision of a learned Single Judge. That being the position, an appeal to the Division Bench is clearly not maintainable against the decision of the Single Judge rendered after 1st July, 2002."

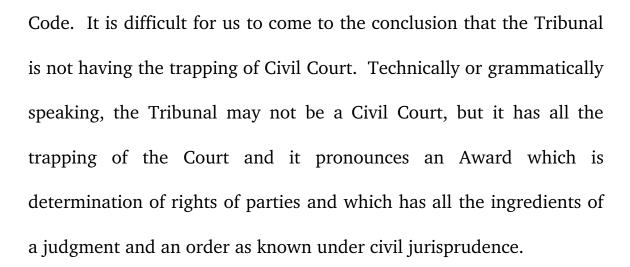
80. In our view, the most appropriate course of action in consonance with the judicial propriety and discipline would have been that the Division Bench dealing with Asha's case (supra) should have referred the matter to a larger Bench rather than expressing the contrary view to that of equi bench judgment 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



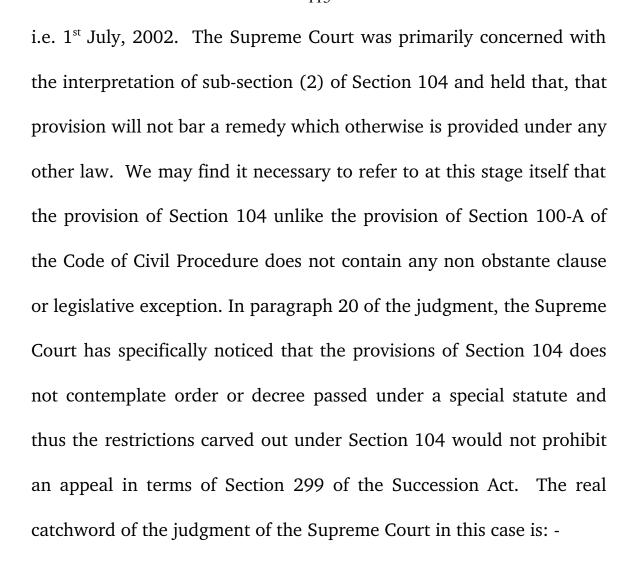
81. It is a settled norm of interpretation of statute that the



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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

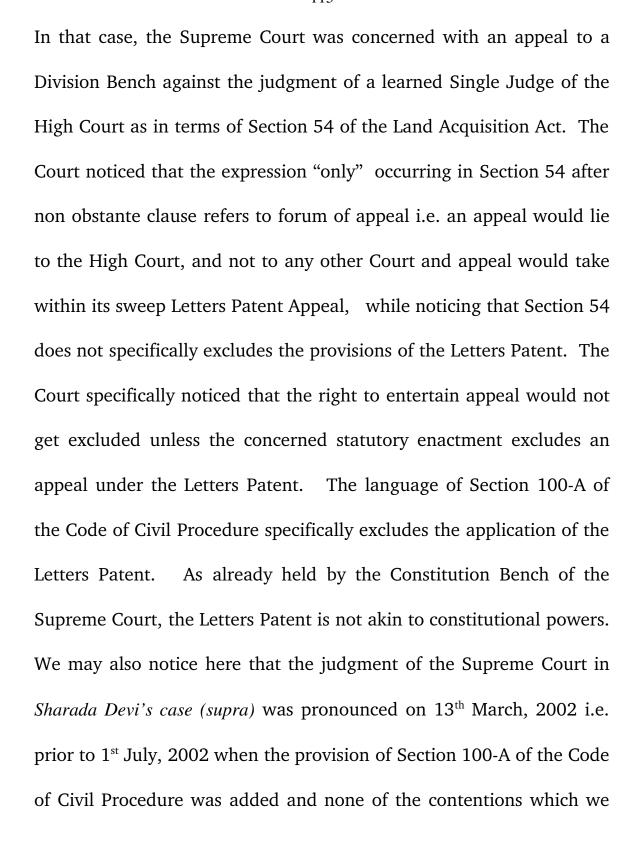


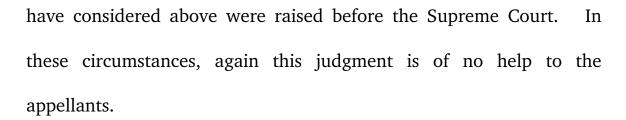
"20. By reason of Section 104 of the Code of civil Procedure the bar of appeal under a special statute is saved. A plain reading of Section 104 of the Code of Civil Procedure would show that an appeal shall lie from an appealable order and no other order save as otherwise expressly provided in the body 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



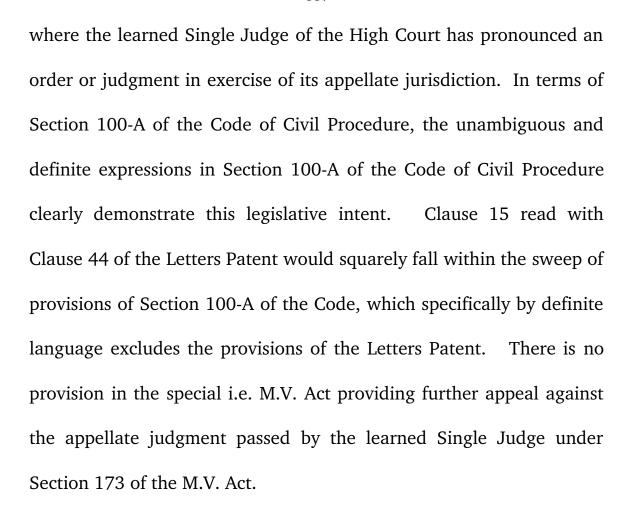
provided for under any other Act, for the time being in force. Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100A of the Code of Civil Procedure."

- 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)*.





It is always not possible to state the legal proposition and 85. 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 The reasons for deciding the earlier case have been adjudication. 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 accepted maxims which are equally applicable to the two 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



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



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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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