Union Of India vs Mohindra Supply Company on 5 September, 1961

Equivalent citations: 1962 AIR 256, 1962 SCR (3) 497

Author: J.C. Shah

Bench: J.C. Shah, K.N. Wanchoo, K.C. Das Gupta, Raghubar Dayal

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
MOHINDRA SUPPLY COMPANY

DATE OF JUDGMENT:
05/09/1961

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
WANCHOO, K.N.
GUPTA, K.C. DAS
DAYAL, RAGHUBAR

CITATION:
1962 AIR 256 1962 SCR (3) 497
CITATOR INFO :
R 1965 SC1442 (18)
D 1967 SC 226 (11)
RF 1981 SC1786 (31,102,136,145)

ACT:
Arbitration-Order of Subordinate Judge refusing to set aside award Appeal to High Court-Single Judge allowing appeal-Letters Patent Appeal, whether maintainable-Interpretation of codifying statutes-Indian-Arbitration Act, 1940 (X of 1940) s. 39(2)-Letters Patent of Lahore High Court, cl.10.

HEADNOTE:
A dispute between the appellant and the respondent arising out of a contract for the supply of fuel was referred to arbitration. The arbitrators gave an award directing the appellant to pay a certain sum of money to the respondent

and filed the award in the court of the Subordinate judge. The appellant made an application for setting aside the award but it was rejected. Against this order the appellant preferred an appeal to the High Court under s. 39(1) of the Indian Arbitration Act, 1940, and a Single judge allowed the appeal and set aside the award. Thereupon the respondent filed a Letters Patent appeal against the judgment of the Single judge. This appeal was allowed, the judgment of the Single judge was set aside and the order of the Subordinate judge was restored. The appellant contended that the Letters Patent Appeal was incompetent as s. 39(2) barred a second appeal from an order passed in appeal under s. 39 (1).

Held, that an appeal against the appellate order of the single Judge was barred by s. 39(2) of the Arbitration Act. The expression "second appeal" in s. 39(2) means a further appeal from an order passed in appeal under s. 39(1) and not an appeal under s. 100 of the Civil Procedure Code, and includes an appeal under the Letters Patent. The Letters Patent of the Lahore High Court, which applied, could, by virtue of cl. 37 thereof, be amended or altered by the Legislatures. By enacting clause (2) of s. 39 of the Arbitration Act the Legislature has prohibited an appeal under the Letters Patent against an order passed under s. 39(1).The provisions of s. 39 apply to appeals to superior courts aswell as to "intra-court appeals".

Madhavdas v. Fithaldas I. L. R. (1952) Bom, 570and Radha Krishna Murthy v. Ethirajulu, I.L.R. (1945) Mad.564, approved.

Hanuman Chamber of Commerce Ltd., Delhi v, JassaRam Nand, A.I.R. (1948) Lah. 64, Banwari Lal Ram Dev v. The Board of Trustees Hindu College, I.L.R. (1948) E.P. 159

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and Mulchand Kewal Chand Daga v. Kishan Das Gridhardas (1961) 74 L.W. 408 F.B., disapproved.

In considering whether s. 39(2) has taken away the right of appeal under the Letters patent the court must interpret the words of the statute without any predisposition towards the state of the law as it was before the enactment of the Arbitration Act, 1940. In interpreting a statute which codifies the law it is not permissible to start with the assumption that it was not intended to alter the preexisting law.

Narendra Nath Sircar v. Kamlabasini Dasi, L.R. (1896) 23 I.A. 18, applied.

Under the Code of Civil Procedure of 1882 there was a conflict of opinion amongst the High Courts on the question whether an appeal lay under the Letters Patent from an appellate order of a Single judge in arbitration matters. The Code of 1908 by enacting s. 4 and s. 104(1) preserved the right of appeal under any other law for the time being. The Arbitration Act, 1940 removed all the provisions relating to arbitration from the Code and made comprehensive

provisions in the Act. Though under the Code of 1908 an appeal did lie under the Letters Patent from an order passed by a Single judge in exercise of appellate jurisdiction that was because the power to hear appeals under a special law was expressly reserved by s. 4 of the Code. There is no provision in the Arbitration Act, 1940, corresponding to s. 4 of the Code and there is nothing which preserves the jurisdiction of the High Court under the Letters Patent. Accordingly, the Letters Patent must be read subject to the provisions of s. 39 of the Arbitration Act.
Hurrish Chunder Chowdry v. Kali Sundari Debia, (1882) L.R. 10 I.A. 4, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 112 of 1958. Appeal from the judgment and decree dated May 25, 1954, of the Punjab High Court in L.P.A. No. 82 of 1948. Naunit Lal and T. M. Sen, for the appellant. S. T. Desai, Chatter Behari and A. G. Ratnaparkhi, for the respondent.

1961. September 5. The Judgment of the Court was delivered by SHAH, J.-A dispute, arising under a contract relating to the supply of solidified fuel between Messrs. Mohindra Supply Company-hereinafter referred to as the respondents-and the Governor-General of India in Council was referred to arbitration of two arbitrators. On March 19, 1946, the arbitrators made and published an award directing the Governor-General to pay to the respondents Rs. 47,250/- with interest at 3% from July 17,1944, till payment. This award was filed in the court of the Subordinate Judge, First Class, Delhi. The Governor-General applied for an order setting aside the award on certain grounds which for the purposes of this appeal are not material. The Subordinate Judge refused to set aside the award on the grounds set up and rejected the application. Against the order refusing to set aside the award, the Governor-General preferred to the Lahore High Court an appeal which after the setting up of the Dominions of India and Pakistan was transferred to the Circuit Bench of the East Punjab High Court at Delhi. Falshaw, J., who heard the appeal set aside the order, because in his view the dispute could not be referred to arbitration under the contract which gave rise to the dispute and ",that was sufficient to invalidate the award". Against that order an appeal was preferred under cl.10 of the Letters Patent of the High Court of Lahore, which by the High Court (Punjab) Order, 1947 applied to the East Punjab High Court. Before the Appellate Bench, the Governor-General contended that the appeal under the letters Patent was prohibited by s. 39(2) of the Indian Arbitration Act. The question whether the appeal was maintainable was referred to a Full Bench of the High Court. The Full Bench opined that an appeal from the judgment of a Single Judge exercising appellate powers did lie under cl. 10 of the Letters Patent, notwithstanding the bar contained in s. 39(2) of the, Arbitration Act. After the opinion of the Full Bench was delivered, a Division Bench considered the appeal on its merits and set aside the order of Falshaw, J. The Union of India appeals against the decision of the High Court.

In this appeal, we are only concerned with the question whether the appeal under el. 10 of the Letters Patent of the High Court against the order of Falshaw, J., was maintainable. The proceedings

relating to arbitration are, since the enactment of the Indian Arbitration Act X of 1940, governed by the provisions of that Act. The Act is a consolidating and amending statute. It repealed the Arbitration Act of 1899, Schedule 2 of the Code of Civil Procedure and also cls. (a) to (f) of s. 104(1) of the Code of Civil Procedure which provided for appeals from orders in arbitration proceedings. The Act set up machinery for all contractual arbitrations and its provisions, subject to certain exceptions, apply also to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the Arbitration Act is inconsistent with that other enactment or with any rules made thereunder. Section 39 of the Act, which deals with appeals, provides:

> "(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:
>
> An order-
>
> (i) superseding an arbitration;
>
> (ii) on an award stated in the form of a special ease;
>
> (iii) modifying or correcting a award; (iV) filing or refusing to file an arbitration agreement;
>
> (Y) staying or refusing to stay legal proceedings where there is an arbitration agreement;
>
> (vi) setting aside or refusing to set aside an award:
>
> Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court. (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

The two sub-sections of s. 39 are manifestly part of a single legislative pattern. By sub-s. (1), the right to appeal is conferred against the specified orders and against no other orders ; and from an appellate order passed under sub-s. (1) no second appeal (except an appeal to this Court) lies. On the question whether the interdict, in sub-s. (2) operates against an appeal under the Letters Patent, there has been a divergence of opinion amongst the High Courts in India. The Bombay High Court in Madhavdas v. Vithaldas (1) held that there is no further right of appeal under the Letters Patent when a Single Judge of the High Court disposed of an appeal under s. 39 (1) of the Arbitration Act. The same view was expressed by the Madras High Court in Radha Krishna Murthy v. Ethirajulu(2). In Hanuman Chamber of Commerce Ltd., Delhi v. Jassa Ram Hira Nand (3) and Banwari Lal Ram Dev v. The Board of Trustees, Hindu College (4) it was held that a right to appeal under the Letters

Patent against an order passed in appeal under s. 39(1) is not restricted by s. 39(2). In the view of the Lahore and the East Punjab High Courts appeals prohibited by sub-s. (2) were second appeals, i.e., appeals under s. 100 of the Civil Procedure Code and "Intra-court appeals" such as appeals under the (1) I.L.R. (1952) Bom. 570.

(2) I.L.R. (1945) Mad. 564.

(3) A.I.R. (1948) Lah. 64.

(4) I.L.R. (1948) E.P. 159.

Letters Patent from an order of a Single Judge to a Bench of the same Court were not prohibited. The Madras High Court in a recent judgment-Mulchand Kewal Chand Daga v. Kissan Das Gridhardass (1) has overruled its earlier decision in Radha Krishna Murthy's case and has held that s. 39 deals only with appeals from orders passed by a court to a superior court and not with appeals "intra-court" and therefore s. 39(2) does not operate to prohibit an appeal under the Letters Patent against the order of a Single Judge exercising appellate jurisdiction in an arbitration matter. Section 39(2) expressly prohibits a second appeal from an order passed in appeal under s. 39(1) except an appeal to this court. There is clear indication inherent in sub-s. (2) that the expression "second appeal" does not mean an appeal under s. 100 of the Code of Civil procedure. To the interdict of a ,'second appeal", there is an exception in favour of an appeal to this Court; but an appeal to this Court is not a second appeal. If the legislature intended by enacting s. 39(2) nearly to prohibit appeals under s. 100 of the Code of Civil Procedure, it was plainly unnecessary to enact an express provision saving appeals to this Court. Again an appeal under s. 39(1) lies against an order superseding an award. or modifying or correcting an award, or filing or refusing to file an arbitration agreement or staying or refusing to stay legal proceedings where there is an arbitration agreement or setting aside or refusing to set aside an award or on an award stated in the form of a special case. These orders are not decrees within the meaning of the Code of Civil Procedure and have not the effect of decrees under the Arbitration Act. Section 100 of the Code of Civil Procedure deals with appeals from appel- late decrees-and not with appeals from appellate (1) (1961) 74 L.W. 408 F.B. orders. If by enacting s. 39(2) appeals from appellate decrees were intended to be prohibited, the provision was plainly otiose; and unless the, context or the circumstances compel the Court will not be justified in ascribing to the legislature an intention to enact a sterile clause. In that premise the conclusion is inevitable that the expression "second appeal' used in s. 39(2) of the Arbitration Act means a further appeal from an order passed in appeal under s. 39(1) and not an appeal under s. 100 of the Civil Procedure Code. This view was expressed by Savdekar, J., in Madhavdass v. Vithaldas (1) and by Rajamannar, C. J., in Mulchand Kewal Chand Daga v. Kissan Das Gridhardass (2) and we agree with the learned Judges that the adjective "imports a further appeal, that is, numerically second appeal". The problem to which attention must then be directed is whether the right to appeal under the Letters Patent is at all restricted by s. 39, sub-ss.(1) and(2). Clause 10 of the Letters Patent of the High Court, in so far- as it is material, provides :

> "'And we do further ordain that an ap. peal shall lie to the said High Court ..... from the judgment (not being a judgment passed in 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 of one Judge of the High Court....."

By this clause, a right to appeal except in the cases specified, from one Judge of the High Court to a Division Bench is expressly granted. But the Letters Patent are declared by el. 37 subject to the legislative power of the Covernor-General in Council and also of the Governor-in- Council under (1) I.L.R. [1952] Bom. 570. (2) (1961) 74 L.W. 408 F.B. the Covernment of India Act, 1915 and may in all respects be amended or altered in exercise of legislative authority. Under s. 39(1), an appeal lies from the orders specified in that sub-section and from no others. The Legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in s. 39(1), a right to appeal from a Judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that clause (2) does not similarly restrict the excercise of appellate power granted by the Letters Patent. If for reasons aforementioned the expression "second appeal"

> includes an appeal under the Letters Patent, it would be impossible to hold that notwithstanding the express prohibition, an appeal under the Letters Patent from an order passed in appeal under sub-s.(1) is competent. The Punjab High Court in Banwari Lal Ram Dev v. The Board of Trustees, Hindu College (1) and the Lahore High Court in Hanuman Chamber of Commerce Ltd., Delhi v. Jassa Ram Hira Nand held that the appeals contemplated by s. 39 are appeals to superior courts and not "intra-court appeals" and therefore the right to appeal under the Letters Patent was not restricted by sub-ss. (1) and (2). But a little analysis of this argument is likely to exhibit the somewhat startling consequences. If the appeal contemplated by s. 39 (1) is only an appeal to a superior court, orders passed by a subordinate court decisions whereof are made appealable to the same court will not be appealable at all under the Arbitration Act. For instance, under the Bombay Civil Courts Act, certain decisions of Assistant Judges are made appealable to the District Courts. An Assistant Judge is a Judge of the District Court and under the Bombay (1) I. L. R. (1948) E. P. 159.
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> (2) A. I. R. (1948) Lah, 64, Civil Courts Act, appeals against his orders and decrees in certain cases lie to the District Court. If the argument that an appeal under el. (1) of s.39 means an appeal to a superior court, be accepted, an appeal from an order under s. 39 (1) by an Assistant Judge will not lie at all. There are similar provisions in the Civil Courts Acts in the other States as well. The qualifying expression "to the court authorised by law to hear appeals from original decrees of the Court passing the order" in s. 39 (1) does not import the concept that the appellate court must be distinct and separate from. the court passing the order or the decree.

The legislature has not so enacted and the context does not warrant such an interpretation. The clause merely indicates the forum of appeal. If from the decision of a court hearing a suit or proceeding an appeal will lie to a Judge or more Judges of the same court, by virtue of s. 39 (1) the

appeal will lie from the order passed under the Arbitration Act, if the order is appealable, to such Judge or Judges of that court. The argument that the right to file an appeal to the Supreme Court from orders in arbitration proceedings would be seriously restricted has in our view no substance. If an order passed in a proceeding on the original side of the High Court is appealable under s. 39 (1), an-appeal will lie to a Division Bench of the High Court and from the order passed by the Division Bench, an appeal, by the express provision contained in sub-s. (2) will lie subject to the restrictions contained in the relevant articles of the Constitution to the Supreme Court. If the order is not one falling within s. 39 (1), no appeal will evidently lie. It is true that against an order passed in arbitration proceeding, by a Division Bench of a High Court in an appeal, an appeal to this Court as a matter of right may lie, if the requirements of Art. 133 are fulfilled ; but if the same case is heard by a Single Judge no such appeal will lie. But the right to appeal is a creature of statute; no, litigant has an inherent right to appeal against a decision of a court. The anomaly relied upon by the appellant occurs in second appeals, and revision applications as well. If these proceedings are heard and disposed of by Single Judges, there is no right of appeal to this Court but against decisions of Division Benches the right to appeal may be exercised.

But it was urged that the interpretation of s. 39 should not be divorced from the setting of legislative history, and if regard be had to the legislative history and the dictum of the Privy Council in Hurrish Chunder Chowdry v. Kali Sundari Debia (1) which has been universally followed, in considering the extent of the right of appeal under the Letters Patent, the Court would not be justified in restricting the right of appeal which was exercisable till 1940 by litigants against decisions of single Judges of High Courts in arbitration matters from orders passed in appeals. In considering the argument whether the right of appeal which was previously exercisable by litigants against decisions of single Judges of the High Courts in appeals from orders passed in arbitration proceedings was intended to be taken away by s. 39 (2) of the Indian Arbitration Act, the Court must proceed to interpret the words of the statute without any predisposition towards the state of the law before the Arbitration Act was enacted. The Arbitration Act of 1940 is a consolidating and amending statute and is for all purposes a code relating to arbitration. In dealing with the interpretation of the Indian Succession Act, 1865, the Privy Council in (1) (1882) L. R. 10 I. A. 4,17.

Narendra Nath Sircar v. Kamlabasini Dasi(1) observed that a code must be construed according to the natural meaning of the language used and not on the presumption that it was intended to leave the existing law unaltered. The Judicial Committee approved of the observations of Lord Herschell in Bank of England v. Vagliano Brothers(1) to the following effect :-

> "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring bow the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically

> dealt with by it the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions..... ".

The court in interpreting a statute must therefore proceed without seeking to add words which are not to be found in the statute, nor is it permissible in interpreting a statute which codifies a branch of the law to start with the assumption that it was not intended to alter the pre- existing law; nor to add words which are not to be found in the statute, or (1) (1896) L. R. 23, I. A. 18.

(2) [1891] A.C. 107, 144-145.

'for which an authority is not found in the statute". But we do not propose to dispose of the argument merely on these general considerations. In our view, even the legislative history viewed in the light of the dictum of the Privy Council in Hurrish Chunder's case, does not afford any adequate justification for departing from the plain and apparent intendment of the statute.

Under the code of Civil Procedure of 1877, a right of appeal was conferred upon litigants against certain orders by s. 588 and from no other such orders. Clauses (s) and (t) dealt with a right to appeal against an order under s. 514 superseding an arbitration, and an order under s.518, modifying an award. It was enacted-in the last paragraph! that the orders passed in appeals under the section shall be final. By paragraph 2 of s. 589, it was provided :

> "When an appeal from any order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made.....".

By s. 591 it was provided:

> "Except as provided in this Chapter, no appeal shall lie from an order passed by any Court in the exercise of its original or appellate jurisdiction."

The Code of 1877 was replaced by the Code of 1882 but the provisions relating to appeals from orders were re-enacted in identical terms. Before the decision in Hurrish Chunder's case, the view was held, especially by the Bombay and the Madras High Courts, that under cl.(15) of the Letters Patent of the High Courts of Bombay, Madras and Calcutta an appeal from an order passed by a single Judge of a High Court lay only under s. 588 of the Code and not otherwise. In Sonba' v. Ahmed bha' Habibha' (1) a Full Bench of the Bombay High Court in construing the provisions of the Letters Patent of the High Court in the light of the provisions of s. 363 of the Civil Procedure Code held that under cl. 15 of the Letters Patent and under the rules of the High Court, an appeal to the High Court from an interlocutory order mad(, by one of the Judges lies only in those cases in which an appeal is allowed under the Code of Civil Procedure and its amending Acts. A similar view was expressed by the Madras High Court in Achaya v. Ratrandu, (2). But the Privy Council in Hurrish Chunder Chowdry v. Kali Sundari Debia (3) in a very terse observation expressed a different view, in

that case one Kassiswari executed a will devising a taluk in equal shares to her daughter Chundermoni and her daughter-in-law Kali Soondari. After the death of Kassiswari, the two devisees under the will sued one Hurrish Chunder for a decree for possession of the taluk. The Subordinate Judge decreed the suit and that decree was ultimately affirmed by the Privy Council in an appeal filed by the daughters of Chundermoni, and the order of the Queen-in-Council was transmitted to the High Court for execution. In the meanwhile, Chundermoni's moiety in the taluk was purchased by Hurrish Chunder. Thereafter, Kali Sundari applied in the original jurisdiction of the High Court at Calcutta for execution of the order of the Queen-in-Council. Pontifox, J., declined to execute the order, because in his view it could not be executed by one only out of the two original plaintiffs. Against that order, an appeal was preferred under cl. 15 of the Letters Patent of the High Court. A Full Bench of the High Court was unanimously of the view that the "discretion" exercised by Pontifex, J., was erroneous but in the view of Garth, C. J., the order passed by Pontifex, J., was merely a ministerial order which he 1872) 9 Bom. R. C. Reports 398. (2) I.L.R. 9 Mad. 447. (3) (1882) L.R. 10 I. A. 4, 17.

had no jurisdiction to pass and the appeal was incompetent. White and Romeshchunder Mitter, JJ., held that the order amounted to a "judgment" and was appealable under cl. 15 of the Letters Patent. Against the order of the High Court, an appeal was taken to the Judicial Committee of the Privy Council by the defendant Hurrish Chunder. The Judicial Committee approved of the majority view of the High Court. In negativing the argument of Garth, C.J., the Committee pointed out that Pontifex, J., was not shown to have usurped jurisdiction which did not belong to him, but even if he had, that was a valid ground of appeal, and that if a Judge of the High Court made an order under a misapprehension of the extent of his jurisdiction the High Court had the power to entertain ,an appeal to set right such a miscarriage of justice. The Committee then observed "It only remains to observe that their Lordships do not think that s. 588 of Act X of 1877, which has the effect of restricting certain appeals, applies to such a case as this where the appeal is from one of the Judges of the Court to the full Court."

This judgment (in Hurrish Chunder Chowdry's case) gave rise to a serious conflict of opinion in the High Courts in India. The High Courts of Calcutta, Bombay and Madras held, following the dictum of the Privy Council, that an order not appealable under s. 588 of the Civil Procedure Code may still be appealable provided it amounted to a "judgment" within the meaning of cl. 15 of the Letters Patent of the respective High Courts.-Chappan v. Moidin Kutti (1), chabhapathi Chetti v. Narayanaswami Chetti(2), Toolsee Money Dassee v. Sudevi Dassee (3), and Secretary of State v. Jehangir (4).

But the Allahabad High Court in Banno Bibi v. Mehdi Husain (1) expressed a contrary opinion. It was observed by Sir John Edge, C. J., that if the (1) I.L.R. (1899) 22 Mad. 68.

(2) I.L.R. (1902) 25 Mad. 555, (3) LL.R.(1899)26Cal.363.

(4) [1902] 4 Bom. 342.

(5) I.L.R. (1889) 11 All. 375.

order was not appealable under s. 588 and s. 591 of the Code of Civil Procedure it could not be appealed against under the Letters Patent of the High Court. This' view was affirmed by a Full Bench of the same court in Muhammad Naim- Ul-Lah Khan v. Ihsan-Ul-Lah Khan (1).

The legislature in this state of affairs intervened, and in the Code of 1908 incorporated a. 4 which by the first sub- section provided :

> "In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any, special jurisdiction or power conferred, or any special form 'of procedure prescribed, by or under any other law for the time being in force"-
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> and enacted in s. 104(1) that an appeal shall lie from the orders set out therein and save as otherwise expressly provided, in the body of the Code or by any law for the time being in force, from no other orders. The legislature also expressly provided that "'no appeal shall lie from any order passed in appeal under this section."

Section 105 was substantially in the Fame terms as s. 591 of the earlier Code.

The intention of the legislature in enacting sub-s. (1) of s. 104 is clear : the right to appeal conferred by any other law for the time being in force is expressly preserved. This intention is emphasised by s. 4 which provides that in the absence of any specific provision to the contrary, nothing in the Code is intended to limit or otherwise affect any special jurisdiction or power conferred by or under any other law for the time being in force. The right' to appeal against judgments (which did not amount to decrees) under the Letters Patent, was therefore not affected by s. 104 (1) of the Code of Civil Procedure, 1908.

(1) I.L.R. (1892) 14 All. 226.

Under the Code, as amended, the view has consistently been taken that interlocutory judgments (i.e., decisions though not amounting to decrees which affect the merits of the questions between the parties by determining some right or liability) passed by single Judges of Chartered High Courts were appealable under the Letters Patent : Ruldu Singh v. Sanwal Singh(1), Paramasivan v. Ramasami (2), Vaman Ravji Kulkarni v. Nagesh Vishnu Joshi's (3), and Ram Sarup v. Kaniz Ummebani (4).

Prior to 1940 the law relating to contractual arbitration (except in so far as it was dealt with by the Arbitration Act of 1899) was contained in the Code of Civil Procedure and certain orders passed by courts in the course of arbitration proceedings were made appealable under the Code of 1877 by s.588 and in the Code of 1908 by s. 104. In 1910, the legislature enacted Act X of 1940, repealing schedule 2 and s. 104 (1) cls. (a) to (f) of the Code of Civil Procedure 1908 and the Arbitration Act of 1899. By s. 39 of the Act, a right of appeal was conferred upon litigants in arbitration proceedings only from certain orders and from no others and the right to file appeals from appellate orders was expressly taken away by sub-s. 2 and the clause in s. 104 of the Code of 1908 which preserved the

special jurisdiction under any other law was incorporated in s. 39. The section was enacted in a form which was absolute and not subject to any exceptions. It is true that under the Code of 1908, an appeal did lie under the Letters Patent from an order passed by a single Judge of a Chartered High Court in arbitration proceedings even if the order was passed in exercise of appellate jurisdiction, but that was so, because, the power of the Court to hear appeals under a special law for the time being in operation was expressly preserved.

(1) (1922) 3 Lah. 188. (2) I.L.R. (1933) 56 Mad. 915. (3) I.L.R. (1940) Bom.426. (4) I.L.R. (1937) All. 386.

There is in the Arbitration Act no provision similar to s. 4 of the Code of Civil Procedure which preserves powers reserved to courts under special statutes. There is also nothing in the expression "authorised by law to hear appeals from original decrees of the Court" contained in s. 39(1) of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against orders passed in arbitration proceedings, they must be read subject to the provisions of s. 39(1) and (2) of the Arbitration Act.

Under the Code of 1908, the right to appeal under the Letters Patent was saved both by s. 4 and the clause contained in s. 104(1), but by the Arbitration Act of 1940, the jurisdiction of the Court under any other law for the time being in force is not saved; the right of appeal can therefore be exercised against orders in arbitration proceedings only under s. 39, and no appeal (except an appeal to this Court) will lie from an appellate order. There is no warrant for assuming that the reservation clause in s. 104 of the Code of 1908 was as contended by counsel for the respondents, "superfluous" or that its 'deletion from s. 39(1) has not made any substantial difference" : the clause was enacted with a view to do away with the unsettled state of the law and the cleavage of opinion between the Allahabad High Court on the one hand and Calcutta, Bombay and Madras High Courts on the other on the true effect of s. 588 of the Code of Civil Procedure upon the power conferred by the Letters Patent. If the legislature being cognizant of this difference of opinion prior to the Code of 1908 and the unanimity of opinion which resulted after the amendment, chose not to include the reservation clause in the provisions relating to appeals in the Arbitration Act of 1940, the conclusion is inevitable that it was so done with a view to restrict the right of appeal within the strict limits defined by s. 39 and to take away the right conferred by other statutes. The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by codifying the law relating to appeals in s. 39. In that view of the case, the appeal must allowed. No order as to costs in this court. The order of the Division Bench of the High Court is set aside and the order passed by the learned Single Judge is restored. We may add that on the view taken by us as to the competency of the appeal under cl. 10 of the Letters Patent, we have not heard counsel on the merits of the appeal.

Appeal allowed.