

**Avtar Narain Behal Vs. Subhash Chander Behal**

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**Court :** Delhi

**Decided On :** Oct-20-2008

**Reported in :** 154(2008)DLT140

**Judge :** Ajit Prakash Shah, C.J.,; Rekha Sharma and; S. Muralidhar, JJ.

**Acts :** [Indian Succession Act, 1925](#) - Sections 299; Code of Civil Procedure (CPC) (Amendment) Act, 2002 - Sections 4; [Delhi High Court Act, 1966](#) - Sections 4, 5(2), 10, 10(1) and 15; Code of Civil Procedure (CPC) (Amendment) Act, 1976 - Sections 38; Code of Civil Procedure (CPC) (Amendment) Act, 1999 - Sections 10; [Arbitration Act, 1940](#) - Sections 39 and 39(1); Trade Marks Act, 1940 - Sections 76; [Government of India Act, 1915](#); Guardians and Wards Act - Sections 25, 47 and 48; Motor Vehicles Act - Sections 140; [Land Acquisition Act, 1894](#) - Sections 54; [Companies Act, 1956](#) - Sections 10-E, 10-F, 397, 398 and 483; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2(2), 4, 4(1), 35A, 47, 91, 92, 95, 96, 100A, 104, 104(1), 104(2), 115 and 622 - Order 39, Rule 1 - Order 43, Rule 1; Constitution of Ind

**Appeal No. :** LPA No. 198/2008

**Appellant :** Avtar Narain Behal

**Respondent :** Subhash Chander Behal

**Advocate for Def. :** Rajan Chaudhary, Adv.

**Advocate for Pet/Ap. :** Arvind Nigam and; Sanjeev Sahay, Advs

**Disposition :** Appeal dismissed

**Judgement :**

Ajit Prakash Shah, C.J.

1. A family dispute and the consequent challenge to the Will dated 19.10.1972 and Codicil dated 25.4.1990 executed by late Shri Gopal Das Behal has given rise to the present proceedings. The respondent filed a petition for grant of probate/letters of administration which came to be allowed by the learned District Judge, Delhi, who by judgment dated 16.10.2003 issued the letters of administration to the respondent. The appellant aggrieved by the same preferred an appeal being FAO No. 420/2003 under Section 299 of the [Indian Succession Act, 1925](#) which was also dismissed by the learned single Judge on 31.03.2008 and the present Letters Patent Appeal has been filed aggrieved by the same order. When a question arose as to maintainability of the Letters Patent Appeal in view of Section 100A of the Code of Civil Procedure, 1908 (CPC) the learned Judges of the Division Bench were of the view that the reasons given by another Division Bench of this Court in Satish Chander Sabharwal and Anr. v. State and Ors. : 122(2005)DLT170 on the basis of which the judgment of the Supreme Court in Subal Paul v. Malina Paul and Anr. : [2003]1SCR1092 has been distinguished were not correct and, therefore, the matter requires consideration by a larger Bench. The learned Judges accordingly referred the following question of law for consideration by a larger Bench:

Whether the Letters Patent Appeal against the judgement of single Judge of this Court in first appeal would be maintainable having regard to the provisions of Section 100A of the Code of Civil Procedure as amended by Amendment Act, 2002

2. Mr. Arvind Nigam, learned counsel appearing for the appellant submitted that in almost identical facts the Supreme Court in the case of Subal Paul v. Malina Paul (supra) has held that a Letters Patent Appeal challenging the decision of a single Judge passed under Section 299 of the Indian Succession Act would be maintainable. Learned counsel cited several other judgments in support of this

contention. The submission of the learned counsel was that Section 10 of the [Delhi High Court Act, 1966](#) is an independent source of appeal for the matters arising under different enactments, including the CPC, and an amendment in the CPC cannot regulate the maintainability of appeals arising out of other local or special enactments. According to him a Letters Patent Appeal would be maintainable, unless expressly excluded by a special statute, in the instant case, the Indian Succession Act. He placed reliance on the decision of the Supreme Court in the case of *National Sewing Thread Co. v. James Chadwick and Bros.* : [1953]4SCR1028 which has been followed in *Subal Paul's* case. He also placed reliance on the decision of the Constitution Bench in *P.S. Sathappan v. Andhra Bank Ltd.* : AIR 2004 SC5152 in order to show that the view expressed in *Subal Paul's* case has been approved by the Constitution Bench. Learned counsel further contended that the right of appeal is not merely procedural, but is a substantive right and it is vested in a party on the date of institution of suit. Such a right could be taken away only by a subsequent enactment either expressly or by necessary intendment. In this regard, he referred to a judgment of the Privy Council in the case of *Colonial Sugar Refinery Co. Ltd. v. Irving* (1905) AC 369 and also the judgment of the Constitution Bench in the matter of *Garikapatti Veeraya v. N. Subbiah Choudhury* : [1957]1SCR488 . According to him it is evident that Section 100A, as amended in 2002, has not been made retrospective and would not be applicable to pending cases.

3. In our view, in the light of the submissions made at the Bar, the question referred needs to be reframed. The question is:

Whether after insertion of the amended Section 100A in the Code of Civil Procedure a Letters Patent Appeal is maintainable against the judgment rendered by a single Judge in an appeal arising out of a special enactment like the Indian Succession Act?

4. In order to answer this question it would be necessary to refer to the relevant provisions of the [Delhi High Court Act, 1966](#). Section 10(1) of the Act provides for a Letters Patent Appeal against the judgment of a single Judge in exercise of original jurisdiction which is also known as intra court appeal and the said

provision reads as follows:

10(1) Power of Judges - (1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by Sub-section (2) of Section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

Section 15 contains a saving Clause and reads as follows:

15 Savings - Save as provided in Section 4, nothing in this Act shall affect the application to the High Court of Delhi of any provisions of the Constitution, and this Act shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by the Legislature or other authority having power to make such provision.

5. Section 100A was introduced in the Code of Civil Procedure by Section 38 of the Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976), which came into force with effect from 1.2.1977. The Section inserted read as follows:

100A. No further appeal in certain cases.-

Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal.

In Clause 40 of the Objects and Reasons, it is stated as follows:

Under the Letters Patent, appeals lie, in certain cases, against the decision of a single Judge in a Second Appeal. Such appeal, in effect, amounts to a third appeal. For the purpose of minimising delay in the finality of adjudications, it is not desirable to allow more than two appeals. In the circumstances, new Section 100A is being inserted to provide that there should be no further appeal against the decision of a single Judge in a second appeal.

Section 100A was thus introduced in the Code of Civil Procedure for the first time with an intention to abolish the third appeal.

6. Section 100A was substituted by Section 10 of the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) which came into force with effect from 1.7.2002. It reads as follows:

100A. No further appeal in certain cases.-

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,-

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution;

by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge.

The Objects and Reasons for the amendment read as follows :

Justice Malimath Committee examined the issue of further appeal against the judgment of single Judge exercising even a first appellate jurisdiction. The Committee recommended for suitable amendments to Section 100-A of the Code with a view to provide that further appeal in this regard shall not lie. The Committee also recommended for suitable enactment by Parliament for abolition of appeal to a Division Bench against the decision and order rendered by a single Judge of the High Court in a proceeding under Article 226 or Article 227 of the Constitution. Clause 10 seeks to substitute a new Section 100-A with a view to provide for no further appeal in the above cases.

The Legislature wanted to take away the further appeals not only from an original decree or order, but even the right of appeal conferred on the litigant against the decisions rendered by a single Judge while disposing of a writ petition filed under

Article 226 or 227 of the Indian Constitution. The purpose was to avoid a system of entertaining a second appeal in the High Court in all categories of cases.

7. Section 100A was again amended by Section 4 of the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) which came into force with effect from 1.7.2002. At present, Section 100A reads as follows:

100A. No further appeal in certain cases.-

Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge.

In Clause 3(j) of the Objects and Reasons contained in Act 22 of 2002, it is stated as follows:

(j) appeals to Division Bench of the High Courts in writs under Articles 226 and 227 of the Constitution shall be restored. Section 10 of the Code of Civil Procedure (Amendment) Act, 1999 abolished appeals against judgments of a single Judge of the High Court in all cases.

8. We may also notice two more provisions of the C.P.C. which have a bearing on the present case, viz. Section 4 and Section 104, which read as hereunder:

4. Savings. - (1) 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.

(2) In particular and without prejudice to the generality of the proposition contained in Sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

104. Orders from which appeal lies. - (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other order:

(a) to (f) (Omitted by [Arbitration Act, 1940](#);) )

(ff) an order under Section 35A;

[(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;]

(g) an order under Section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in Clause (ff) save on the ground that no order or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

9. The question of maintainability of a Letters Patent Appeal against the order passed by a single Judge in appeal arising under a local or special enactment has been dealt with by the Supreme Court on numerous occasions right from the first case of *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.* (supra). In the said case the question arose whether a Letters Patent Appeal under Clause 15 of the Letters Patent of the Bombay High Court was maintainable against the judgment of a single Judge exercising appellate jurisdiction under Section 76 of the Trade Marks Act, 1940. Holding that such an appeal was maintainable, the Supreme Court observed: (AIR p. 360 para.7)

Section 76, Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the

appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.

Referring to Clause 44 of the Letters Patent, it was held that the provisions of the Letters Patent were subject to the legislative powers of the Governor-General-in-Legislative Council, and therefore, in the present-day context, subject to the legislative power of the appropriate legislature. But the Court found nothing in the Trade Marks Act restricting the right of appeal under Clause 15 of the Letters Patent.

10. This question was also considered by a four-Judge Bench of the Supreme Court in the case of *Union of India v. Mohindra Supply Co.* : [1962]3SCR497 . In this case, a dispute between the parties was referred to arbitration. The arbitrator gave an award. An application was made for setting aside the award. That application was rejected. Against that order an appeal was preferred to the High Court under Section 39(1) of the [Arbitration Act, 1940](#). A single Judge of the High Court allowed the appeal and set aside the award. Thereupon, a Letters Patent Appeal was filed. The question was whether a second appeal was barred. The Court referred to Clauses 10 and 37 of the Letters Patent of the Punjab & Haryana High Court and held that the provisions of the Letters Patent are subject to the legislative power of the Governor-General-in-Council, which in the present day context means, 'subject to the legislative power of the appropriate Legislature'. It was held that in view of Section 39 of the Arbitration Act, only one appeal is maintainable and the right to further appeal is taken away. The Court observed in paragraph 5 as follows: (AIR page 259, para 5)

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 Clause 37 subject to the legislative power of the Governor-General in Council and also of the Governor-in-Council under the [Government of India Act, 1915](#), and may in all respects be amended or altered in exercise of legislative

authority. Under Section 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 Section 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 exercise 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-section (1) is competent.

11. The question whether a Letters Patent Appeal would be barred was considered by a Constitution Bench in the case of *Gulab Bai v. Puniya* reported in : [1966]2SCR102 . In this case, an application under Section 25 of the Guardians and Wards Act was rejected by a Civil Court. This decision was reversed in appeal by a single Judge of the Rajasthan High Court. Against the decision of the single Judge an appeal under Clause 18 of Rajasthan High Court Ordinance was filed. The question was whether such an appeal was not maintainable by virtue of Sections 47 and 48 of the Guardians and Wards Act. Section 47 permitted an appeal to the High Court whilst Section 48 gave finality. The finality prescribed under Section 48 was subject to the provisions of Section 47 and Section 622 of the Code which corresponds to Section 115 of the present Code of Civil Procedure. The Court held that an appeal permitted by the relevant Clause of the Letters Patent of a High Court cannot be taken away by implication. Referring to a decision of the Privy Council in *Hurrish Chunder Chowdhry v. Kali Sundari Debia* (10) Indian Appeals 4 the Court also held that the words 'under any law for the time being in force' in Section 104(1) saves a Letters Patent Appeal.

12. In *Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation and Ors.* reported in : [1997]1SCR395 the question, whether a Letters Patent Appeal was maintainable, again arose. In this case a status quo order was passed by a trial court. In appeal, a single Judge of the High Court, vacated the order of status quo.

The Court following a decision in Resham Singh Pyara Singh v. Abdul Sattar : (1996)1SCC49 held as follows: (SCC page 464 para 5)

It is settled legal position that right of appeal is a creature of the statute. Against an interlocutory order, an appeal has been provided under Section 104(1) of the Code read with Order 43, Rule 1. In respect of interim injunction, it is covered by Order 43, Rule 1(r). In this case, the order of status quo was passed in an application filed under Order 39, Rule 1 of the Code. Therefore, it is not in dispute that it is an order passed by the civil court under Order 39, Rule 1 appealable under Order 43, Rule 1(r) of the Code. Sub-section (2) of Section 104 specifically prohibits second appeal against such an order postulating that 'No appeal shall lie from any order passed in appeal under this Section'. In Resham Singh Pyara Singh v. Abdul Sattar a Bench of this Court consisting of K. Ramaswamy and B.L. Hansaria, JJ. has held that against an appellate order of a learned single Judge of a High Court passed by the civil court, a letters patent appeal would not lie by reason of the bar created by Sub-section (2) of Section 104 of the Code.

13. The question whether a Letters Patent Appeal was maintainable against a

## **JUDGMENT / ORDER**

of a single Judge in an order passed under Section 140 of the Motor Vehicles Act was considered by the Supreme Court in the case of Chandra Kanta Sinha v. Oriental Insurance Co. Ltd. : [2001]3SCR759 . In that case, it was held that such an appeal was maintainable. It was also held that the decision of the Supreme Court in New Kennilworth Hotel (P) Ltd. v. Orissa State Finance Corporation (supra) was inapplicable to the said case.

14. In Sharda Devi v. State of Bihar : [2002]2SCR404 it was observed that the Letters Patent is not an enactment, but a Charter of the High Court and that a non-obstinate Clause contained in Section 54 of the [Land Acquisition Act, 1894](#) could not cover the Charter of the High Court.

15. We may now refer to the decision of the three Judge Bench in Subal Paul v. Malina Paul (supra) on which strong reliance has been placed by the learned

counsel appearing for the appellant. In this case, the learned Additional District Judge rejected the prayer for issue of probate. An appeal preferred under Section 299 of the Succession Act was allowed by a learned single Judge of the High Court and letters of administration were granted. In Letters Patent Appeal filed before the Bench, a preliminary objection was raised that no such appeal is maintainable being barred by Section 104 of the Code of Civil Procedure. The Bench overruled the objection and directed for hearing of the appeal. At this stage, the appellant moved the Supreme Court. The argument was that since the order passed by the District Judge in a contentious proceedings is not a decree within the meaning of Section 2(2) of the Code of Civil Procedure, the appeal would not be from a decree as provided for under Section 96 of the Code of Civil Procedure. In that view of the matter, Sub-section (2) of Section 104 of the Code of Civil Procedure is a bar as regards maintainability of appeal under Clause 15 of the Letters Patent of the Calcutta High Court. After considering the scheme of the Succession Act the Court noted that a right of appeal of a party in a contentious proceedings is to be found in the provisions of Section 299 of the Succession Act itself and not in Section 104 of the Code of Civil Procedure. The Court after referring to the decision of the Privy Council in *Hurish Chunder Chowdhry v. Kali Sundari Debia* (supra) and also the judgments of High Court of Calcutta, Madras and Bombay held as follows: (AIR pages 1931/32 para 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 recognizes 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.

The court noted that the decision in the case of *New Kenilworth Hotel (P.) Ltd.* (supra) was distinguished in *Chandra Kanta Sinha v. Oriental Insurance Co. Ltd.*

(supra) and is inapplicable to a case where a single Judge has passed the order exercising an appellate power provided under a special statute and not under Section 104 of the Code of Civil Procedure.

16. In none of the aforementioned judgments, the Supreme Court was called upon to consider the ambit and scope of Section 100A of the Code, as it stands today and its effect on the maintainability of the Letters Patent Appeal, though in Subal Paul's case (supra), the three Judge Bench did observe that this Section creates an express bar on the maintainability of further appeal.

17. At this stage, we may refer to the judgment of the Constitution Bench in P.S. Sathappan v. Andhra Bank Ltd. (supra). In this case the Constitution Bench was called upon to decide apparently conflicting views expressed in Gulab Bai v. Punia (supra) on the one hand and New Kennilworth Hotel's case (supra) on the other. The majority of the Constitution Bench examined the scheme Constitution Bench examined the scheme of Section 104 of the Code in the light of the other provisions, including Section 4 and held that Section 104(1) specifically saves letters patent appeal and the bar contained in Section 104(2) does not apply to such appeals. The decisions in the case of New Kenilworth Hotel (P) Ltd. and Resham Singh Pyara Singh were expressly overruled. However, it is important to note that the Constitution Bench emphasised that the legislature can exclude the Letters Patent Appeal. The majority judgment referred to Section 100A of the Code as amended in the year 2002 and observed as follows: (AIR page 5176/77 para 30)

As stated hereinabove, a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent. But where there is an express saving in the statute/section itself, then general words to the effect that 'an appeal would not lie' or 'order will be final' are not sufficient. In such cases i.e. where there is an express saving, there must be an express exclusion. Sub-section (2) of Section 104 does not provide for any express exclusion. In this context reference may be made to Section 100-A. The present Section 100-A was amended in 2002. The earlier Section 100-A, introduced in 1976, reads as follows:

100-A. No further appeal in certain cases.- 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 appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal.

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 100-A 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. After 2002, Section 100-A reads as follows:

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

To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal.

The majority judgment also referred to Clause 44 of the Letters Patent and observed that Letters Patent is a special law vis-a-vis the Code and in case of conflict, the former would prevail except when there is an exclusion of the special law like the one made by Section 100A. In paragraph 32 of the judgment, the Court observed as follows: (AIR page 5177)

It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent, but then which legislation is not subject to amendment or alteration? CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in *Vinita Khanolkar's case* and *Sharda Devi's case*, a Letters Patent is the charter of the High Court. As held in *Shah Babulal Khimji v. Jayaben D. Kania* : [1982]1SCR187 , a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in the aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.

In the course of the judgment, the Bench also clarified the observations made in *Sharada Devi's case* (supra) to the effect that the letters patent was akin to the constitutional powers of the High Court and observed as follows: (AIR page 5175, para 27)

Thereafter in the case of Sharda Devi's case, the question again arose whether a letters patent appeal was maintainable in view of Section 54 of the Land Acquisition Act. A three-Judge Bench of this Court held that a Letters Patent was a charter under which the High Courts were established and that by virtue of that charter the High Court got certain powers. It was held that when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain such an appeal does not get excluded unless the statutory enactment excludes an appeal under the Letters Patent. It was held that as Section 54 of the Land Acquisition Act did not bar a letters patent appeal, such an appeal was maintainable. At this stage it must be clarified that during arguments, relying on the sentence - the powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court - in para 9 of this judgment it had been suggested that a Letters Patent had the same status as the Constitution. In our view these observations merely lay down that the powers given to a High Court are the powers with which that High Court is constituted. These observations do not put Letters Patent on a par with the Constitution.

18. A plain reading of the above observations makes it clear that the right of appeal conferred by the Letters Patent can be taken away by the Parliament by enacting appropriate provision in the C.P.C. and the provisions contained in Section 100A of C.P.C. expressly barred a second appeal against a judgment and order in the first appeal passed by a single Judge.

19. The effect of Section 100A of the Code on the maintainability of Letters Patent Appeal against an appellate order under special Act fell for consideration in a recent judgment of a two Judge Bench in Kamal Kumar Dutta and Anr. v. Ruby General Hospital Ltd. and Ors. 2006 (7) SCC 613. In this case the appeals were preferred to the Supreme Court against the order passed by a single Judge of the High Court in a matter under Sections 397 and 398 of the [Companies Act, 1956](#). A preliminary objection was taken to the maintainability of the appeal on the ground that the appellants have alternative remedy of approaching the Division Bench of the Calcutta High Court under Clause 15 of the Letters Patent. It was, therefore, argued that the Court should not entertain the appeals and the same should be dismissed as the appellants have alternative remedy under Clause 15 of the

Letters Patent before the Calcutta High Court. Relying on the decision in *Garikapatti Veeraya v. N. Subbiah Choudhury* (supra) it was submitted that the appeal is a vested right and cannot be taken away. Alternative submission was also made that if Clause 15 does not apply, appeal would lie under Section 483 of the Companies Act. In this connection reliance was placed on a decision of the Supreme Court in *Arati Dutta v. Eastern Tea Estate (P) Ltd.* : [1988]1SCR1070 and of the Bombay High Court in *Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co.* : AIR2004 Bom38a . On the other hand, on behalf of the appellant reliance was placed on Section 100A of the Code of Civil Procedure. It was urged that in view of the bar created under Section 100A no further appeal shall lie on the judgment or decree of such single Judge. Rejecting the preliminary objection the Court held as follows: (SCC pages 627 to 630)

21. But after the amendment the power which was being exercised under Sections 397 and 398 of the Act by the learned Single Judge of the High Court is being exercised by CLB under Section 10-E of the Act. Appeal against the order passed by CLB, lies to the High Court under Section 10-F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 of the Act was that from any order passed by the Single Judge exercising the power under Sections 397 and 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 CLB and appeal has been provided under Section 10-F of the Act. Thus, Part I-A was inserted with effect from 1-1-1964. But the constitution of the Company Law Board and the power to decide application under Sections 397 and 398 of the Act was given to CLB with effect from 31-5-1991 and appeal was provided under Section 10-F of the Act with effect from 31-5-1991. Therefore, on reading of Sections 10-E, 10-F, 397 and 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 and 398 of the Act shall be dealt with by CLB and the order of CLB is appealable under Section 10-F 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 *Garikapatti Veeraya v. N. Subbiah Choudhury* 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 applicant was well founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment, either expressly or by necessary intendment.

22. 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. Parliament while amending Section 100-A 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 the learned Single Judge to the Division Bench. Section 100-A of the Code of Civil Procedure reads as follows:

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

23. 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 CLB and against that an appeal has been provided before the High Court under Section 10-F 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 matter where the learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. The learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100-A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

24. In this connection, our attention was invited to a decision in *Arati Dutta v. Eastern Tea Estate (P) Ltd.* This was a case in which the power was exercised by the learned Single Judge under Sections 397 and 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 of the substantive right conferred by the statute. We have already explained above that earlier the power under Sections 397 and

398 of the Act was being exercised by the 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 the respondents.

25. In this connection, our attention was invited to a decision of the Bombay High Court in Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co. In that case, the High Court took the view that despite the amendment in Section 100-A of the Code of Civil Procedure, order passed by the Single Judge in appeal arising out of the order passed by CLB under Sections 397 and 398 of the Act, appeal lay to the Division Bench and in that connection, the Division Bench invoked Section 4(1) of the Code of Civil Procedure which says that 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 and, therefore, the Division Bench concluded that the letters patent appeal is a statutory appeal and special enactment. Therefore, appeal shall lie to the Division Bench. We regret to say that this is not the correct position of law. We have already explained the facts above and we have explained Section 100-A of the Code of Civil Procedure to indicate that the power was specifically taken away by the legislature. Therefore, the view taken by the Bombay High Court in Maharashtra Power Development Corporation cannot be said to be the correct proposition of law.

26. In this connection, our attention was invited to a Constitution Bench decision in P.S. Sathappan v. Andhra Bank Ltd. In this case, the Constitution Bench observed as follows: (SCC p. 675)

From Section 100-A CPC, as inserted in 1976, it can be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100-A, as amended in 2002, it can be seen that the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section

100-A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal. The words used in Section 100-A 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.

27. Similarly, in *Subal Paul v. Malina Paul* their Lordships observed as follows: (SCC p. 368, para 20)

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

28. In *Gandla Pannala Bhulaxmi v. Managing Director, A.P. SRTC* the Full Bench of the Andhra Pradesh High Court has taken a similar view in the matter. Same is the view taken by the Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai v. State of Kerala*. Therefore, in this view of the matter, we are of the opinion that the preliminary objection raised by Mr Nariman cannot be sustained and the same is overruled.

20. It is, thus, clearly held by the two Judge Bench that a Letters Patent Appeal against a decision rendered by the single Judge in an appeal arising under the special statute is also barred by Section 100A of the Code of Civil Procedure.

21. In *Salem Advocate Bar Association v. Union of India* : AIR 2003 SC189 , the Supreme Court observed as follows:

Section 100-A deals with two types of cases which are decided by a Single Judge. One is where the Single Judge hears an appeal from an appellate decree or order. The question of there being any further appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal

should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a Single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a Single Judge. In such a case to give a further right of appeal where the amount involved is nominal to a Division Bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-court appeal, even where the value involved is large. In such a case, the High Court by rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100-A.

22. A plain reading of the provisions of Section 100A of the Code of Civil Procedure makes it very clear that there is complete prohibition of filing a further appeal against a decree and order of a single Judge. The said legislative declaration prohibits preferring a further appeal against the judgment and decree of a single Judge if an appeal is provided in any other law for the time being in force. Thus, as prohibited by Section 100A, preferring a further appeal to a Division Bench against the judgment and decree of a single Judge is barred, not only under the Letters Patent of any High Court but also under any special enactment under which such appeal is provided. Section 15 of the Delhi High Court Act provides that the provisions of Act are subject to any provision that may be made on or after the appointed day with respect to the High Court by the legislature or other authority having power to make such provision. The non-obstinate Clause in 100A of the Code has the effect of taking away the right of appeal which is available under Section 10 of the Delhi High Court Act. The use of the expression 'notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or any other law for the time being in force' is clearly indicative of the legislature intention to totally bar Letters Patent Appeal against the judgment rendered by a single Judge in an appeal arising from an original or appellate decree or order. The language of Section 100A does not suggest that the exclusion of the right of appeal available under the Letters Patent is confined only to the matters arising under the Code

and not under any enactments.

23. The next submission of Mr. Arvind Nigam is that even if it is held that Section 100A would bar a Letters Patent Appeal arising under a special enactment nevertheless those provisions will not operate to bar the present Letters Patent Appeal, since the proceedings commenced long prior to the insertion of Section 100A of the Code of Civil Procedure. It is true that right of appeal is a matter of substance and not of procedure, and such right is vested on the date when the original proceedings are instituted. However, the vested right of appeal can be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment. In *Bhenoy G. Dembla v. Prem Kutir (P) Ltd.* 2003 Comp Cas 643 (Bom.), a Division Bench of the Bombay High Court to which one of us (A.P. Shah, C.J.) was a party held that the provisions of Section 100A are to the effect that 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. The use of the word 'is' would make it abundantly clear that what the legislature intended was that no further appeal should be maintainable where any appeal from an original or appellate decree or order is heard and decided after July 1, 2002, by a single Judge of a High Court. Therefore, the necessary intendment of Section 100A is that where the appeal from an original or appellate decree is decided by a single Judge of a High Court after July 1, 2002, no further appeal would be maintainable. To hold otherwise would run contrary to the plain intendment, as well as the object and underlying purpose of Section 100A. In introducing the amended provisions of Section 100A, the legislature was concerned as much with the existing backlog of cases as the accretion to the backlog that would accrue by the institution of fresh cases after the amended provisions were brought into force. Consequently, it would be unreasonable to attribute to the legislature the intendment that while seeking to bring into effect a provision which was intended to cure the delays of litigation, the legislature would have intended to exempt from its purview all cases which have filed prior to the date on which the amendment was brought into force. As noticed earlier a similar submission was expressly rejected by the Supreme Court in *Kamal Kumar Dutta v. Ruby General Hospital* (supra).

24. In the light of the foregoing discussion, we hold that after insertion of Section 100A in the Code of Civil Procedure no Letters Patent Appeal is maintainable against the judgment rendered by a single Judge in a first appeal arising out of a special enactment e.g. Indian Succession Act. The appeal is, therefore, dismissed as not maintainable.

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