

Ramdhan Vs. Bhanwarlal

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SooperKanoon Citation : sooperkanoon.com/752154

Court : Rajasthan

Decided On : May-20-1983

Reported in : AIR1985Raj185; 1983()WLN439

Judge : Dwarka Prasad,; S.C. Agarwal and; Kanta Bhatnagar, JJ.

Acts : Rajasthan High Court Ordinance, 1949 - Sections 18; [Representation of the People Act, 1951](#) - Sections 77, 84, 98, 99, 116A and 123(6); [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Special Appeal No. 9 of 1980

Appellant : Ramdhan

Respondent : Bhanwarlal

Advocate for Def. : M. Mridul, Adv.

Advocate for Pet/Ap. : M.M. Singhvi and; R.L. Jangid, Adv.

Disposition : Appeal dismissed

Judgement :

Dwarka Prasad, J.

1. This matter has come before us on a reference made by a Division Bench of this Court and arises out of an appeal filed under Section 18 of the Rajasthan High

Court Ordinance, 1949.

2. The appellant Ramdhan was declared elected as a Member of the Rajasthan State Legislative Assembly from the Ladnu Legislative Assembly Constituency on June 1, 1980. The respondent Bhanwarlal claiming himself to be an elector of the Ladnu Constituency presented an election petition in this Court on July 14, 1980 alleging that Ramdhan was guilty of corrupt practice specified in Section 123(7) of the [Representation of the People Act, 1951](#) (hereinafter referred to as 'the Act'), on account of his incurring expenditure in contravention of the provisions of Section 77 of the Act. According to the petitioner Bhanwarlal, the expenditure incurred by the returned candidate Ramdhan, in connection with the aforesaid election, exceeded the maximum limit authorised to be incurred by the notification dated November 29, 1979. However, no prayer was made in the election petition filed by Bhanwarlal. The election petition was supported by an affidavit of Bhanwarlal petitioner stating that he has filed the election petition calling in question the election of Ramdhan respondent. Probably, realising the defect in the election petition on account of the absence of a prayer clause, Bhanwarlal submitted an application on July 26, 1980, under Order 6 Rule 17 C.P.C. read with Section 87 of the Act, seeking to amend the election petition by addition of the following prayer clause : --

'It is, therefore, prayed that the Election Petition may kindly be accepted with costs and the election of the respondent Ramdhan may be declared to be void under Section 100 of the Representation of the People Act.'

It was stated in the amendment application that the omission of the aforesaid prayer clause in the original election petition was purely a typographical error and was committed due to oversight. The application for amendment of the election petition was contested by the returned candidate Ramdhan on the ground that the original election petition, as presented by Bhanwarlal without a prayer clause, was not at all an election petition in the eye of law and that such a defective petition could not be allowed to be converted into a proper election petition by making an amendment therein, after the expiry of the period of limitation fixed for filing an election petition in the matter. The learned single Judge, hearing the election

petition, held that the absence of a prayer clause in the election petition was merely an inadvertent mistake on the part of the election petitioner and the said error should be allowed to be rectified by amendment. The argument that if the amendment sought was allowed, it would constitute a new election petition, was rejected. It was held that the right of the returned candidate would not be prejudiced by allowing the amendment asked for and as such the application for amendment of the election petition was allowed on payment of Rs. 250/- as costs.

3. The returned candidate Ramdhan thereafter filed a special appeal in this Court under Section 18 of the Rajasthan High Court Ordinance, 1949 (hereinafter called 'the Ordinance') against the aforesaid order passed by the learned single Judge, allowing the amendment of the election petition. The Division Bench, before whom the special appeal came up for hearing felt that important questions of law were involved in the case and as such referred the special appeal to a larger bench for decision and the questions of law involved therein were summarised by the Division Bench as under :--

1. that the Representation of the People Act is a self-contained statute and the right of appeal is regulated by Section 116A of it. No appeal lies to the High Court as Section 116A provides the appeal to the Supreme Court.

2. that the appeal under Clause 18 of the Rajasthan High Court Ordinance cannot be filed in the High Court, because by enactment of the above provision of Section 116A, the legislature has intended to exclude any such right of appeal before Division Bench,

3. that in any case, the order granting the amendment is an interlocutory interim order, which is neither a preliminary nor a final judgment. It also nowhere creates rights or liabilities and, therefore, no appeal can be filed under Clause 18 of the Rajasthan High Court Ordinance.'

4. So far as questions Nos. 1 and 2 are concerned, we feel that they relate to the same subject-matter and can be conveniently dealt with together, because the essential point which requires to be determined in connection with both questions Nos. 1 and 2 above is as to whether an internal appeal to a Division Bench of the

High Court is maintainable, in respect of a judgment passed on an election petition, relating to the Legislative Assembly or Parliamentary elections, in view of the provisions of Section 116A of the Act. We, therefore, propose to deal with questions Nos. 1 and 2 together. Of course, we shall deal with the third question separately.

Questions Nos. 1 & 2 :

5. The argument of the learned counsel for the election petitioner Bhanwarlal is that in the case of an election petition filed under the Act the right of appeal is governed by the provisions of Section 116A of the Act and an internal appeal to a Division Bench of the High Court under Section 18 of the Ordinance is not maintainable on the ground that the Act is a self-contained Code and the provisions of Section 18 of the Ordinance were intended to be excluded from application to a judgment arising out of an election petition filed under the Act. Sub-section (1) of Section 18 of the Ordinance, which is similar to Clause 15 of the Letters Patent of most of the High Courts in India, runs as under : --

'18. Appeal to the High Court from judges of the Court:-- (1) An appeal shall lie to the High Court, from 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 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 Section 45 or in the exercise of criminal jurisdiction) of one Judge of the High Court.'

6. The aforesaid provision allows an internal appeal to a Division Bench of the High Court from a decree, judgment or final order passed by a single Judge of the High Court, except decrees or orders passed in second appeals. Whether an appeal is maintainable under the provisions of Section 18(1) of the Ordinance against a judgment passed in an election petition filed under Section 81 of the Act would depend upon the determination of the various questions relating to the nature of the jurisdiction of the High Court in trying election petitions filed under the Act. and regarding the nature of the adjudication made under the election law.

Before embarking upon a discussion of the matter, it would be useful at this stage to consider the legislative history of the provisions relating to election petitions and appeals contained in Part VI of the Act and the various amendments made therein from time to time.

7. Part VI of the Act deals with the disputes relating to election and begins with Section 80 which provides that no election shall be called in question except by an election petition presented in accordance with the provisions of that part. As the Act was originally enacted in the year 1951, an election petition, filed under Section 80 of the Act and presented in accordance with the provisions contained in Section 81 used to be tried by an Election Tribunal consisting of three members. Section 86 as it then existed, made provision for the constitution of the Election Tribunal. Section 87 makes the procedure prescribed under the Code of Civil Procedure for the trial of the suits applicable to the trial of the election petitions by the High Court, as nearly as may be, subject to the provisions of the Act and the Rules made there under. Section 98 provides for the type of orders the High Court is empowered to make at the conclusion of the trial of an election petition and Section 99 provides for other orders which can be made by the High Court while deciding the election petition under Section 98. Section 105, as it existed at that time, provided that the orders passed by the Election Tribunal shall be final and conclusive. Thus, no appeal at all was provided against any of the orders passed by the Election Tribunal on an election petition filed under the Act.

8. In the year 1956, the Act was amended by the Representation of the People (Second Amendment), Act, 1956 (Act No. 27 of 1956). Sub-section (3) of Section 86, as amended in 1956, provided' that every Election Tribunal shall consist of a single member, selected by the Election Commission from the list of District Judges obtained by the Commission from the High Courts, who in the opinion of the High Court concerned were fit to be appointed as members of the Election Tribunal. Section 105 which provided for the finality of the orders passed by an Election Tribunal was repealed by the amending Act No. 27 of 1945 and in its place a new Chapter IV-A was introduced in Part VI of the Act, inserting Section 116A, which provided for an appeal to the High Court of the State in which the Election Tribunal was situated, in respect of every order made by the Tribunal

under Ss. 98 and 99 of the Act. It was also provided therein that such appeals shall be heard by a Bench of not less than two Judges of the High Court,

9. These provisions underwent further change in the year 1966 by virtue of the provisions of the Amending Act No. 47 of 1966. Before the aforesaid amendment, an election petition filed under the Act was required to be presented to the Election Commission and it was the duty of the Election Commission to transmit such election petition to the concerned Election Tribunal, which was constituted for the purpose of hearing the election petition concerned. However, by the Amending Act No. 47 of 1966, Section 80A' was inserted in the Act, which runs as under : --

'80-A. High Court to try election petitions. --(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose;

Provided that where the High Court consists only of the Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interest of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.'

10. Thus, with the introduction of Section 80A the jurisdiction to hear and decide an election petition filed under the Act is vested in the High Court and it is no longer necessary to present the election petition to the Election Commission but it is required to be presented to the High Court having jurisdiction. Ordinarily such a jurisdiction to hear and decide an election petition under the Act is to be exercised by a single Judge of the High Court and the Chief Justice is authorised under Section 80A to assign one or more Judges for that purpose from time to time.

11. With the change of the forum for hearing election disputes under the Act, on account of the amendment made by Act No. 47 of 1966, S. 81 provided for presentation of an election petition to the High Court having jurisdiction. As soon

as an election petition is presented to the High Court, sub-sec. (2) of S. 86 enjoins upon the Chief Justice of the High Court to refer the election petition to one of the Judges, who have been assigned by him the work of trial of election petition under sub-section (2) of Section 80A.

12. In the Bill, as it was originally introduced in the Parliament and as it was returned by the Joint Select Committee, clause 43 proposed to introduce Section 104 in the Act, so as to provide that every order of the High Court passed under the Act shall be final and conclusive, notwithstanding anything contained in the Letters Patent of the High Court or any other law for the time being in force. The Bill also proposed for deletion of Chapter IV-A of Part VI of the Act relating to appeals. However, when the Bill finally emerged from the Parliament and was enacted as Amending Act No. 47 of 1966, Clause 43 of the Bill was deleted and Chapter IV-A of the Act providing for appeals was retained. However, Section 116A was modified so as to provide an appeal to the Supreme Court of India in respect of orders made under Sections 98 and 99 of the Act. The amended provisions of Section 116A are as under : --

'116-A. Appeals to Supreme Court.-- (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under Section 98 or Section 99.

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under Section 98 or Section 99.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.'

13. A survey of the various amendments made in the, Act during the first 16 years of its existence goes to show that although in the beginning no appeal at all was provided against the orders passed by the Election Tribunal consisting of three members'; on the other hand. Section 105 made each and every order passed by the Election Tribunal, in respect of Legislative Assembly or Parliamentary

elections, final and conclusive. Then in the year 1956 the three member Election Tribunal was substituted by a single member Tribunal constituted by a District Judge and an appeal was provided under Section 116A to the High Court from orders made under Ss. 98 and 99, with the rider that such appeal would be heard by a bench of not less than two Judges. Subsequently, by the amendment made in the year 1966, the High Court took the place of the single member Election Tribunal, and an appeal was provided from every order made under Ss. 98 and 99 to the Supreme Court under the amended Section 116A. It may also be pointed out that in the bill which emerged from the Joint Select Committee, although it was proposed that the Election Petition should be heard by the High Court, yet it was also proposed that every order passed by the High Court on such election petition should be considered to be final and conclusive and the provisions contained in Section 116A relating to appeals was sought to be deleted. But then the Parliament thought it necessary to provide one appeal against specified orders and as such Section 116A was amended so as to provide an appeal to the Supreme Court.

14. It was argued before us by the learned counsel for the appellant that the provisions of Part VI of the Act, relating to disputes regarding elections, refer to the High Court as such and not a Judge of the High Court, as to constituting a special Tribunal or as a persona designate appointed to try an election dispute. No doubt, a perusal of the provisions relating to the presentation, trial and disposal of election petitions, contained in Part VI of the Act and referred to above goes to show that the jurisdiction to try the election petitions and to decide the election disputes has been conferred on the High Court as a Court and not as a special Tribunal. It is significant that Sub-section (2) of Section 80A provides that the jurisdiction of the High Court to try election petitions shall 'ordinarily' be exercised by a single Judge of the High Court. Thus, it is apparent that a single Judge of the High Court, trying an election petition does not constitute a special Tribunal nor the Judge trying such election petition is a persona designata and such a Judge does not act in a different capacity while trying the election petition, but as the High Court in its original civil jurisdiction. As a matter of fact the jurisdiction of the High Court has been enlarged by the amended provisions of the Act so as to extend its ordinary original civil jurisdiction for the purpose of hearing election petitions and

disposing of election disputes relating to legislative assembly and parliamentary elections.

15. We may refer to the following observations of Lord Parker in *National Telephone Co. Ltd. v. Post Master-General* (1913) AC 546, in this context :-

'Where by a statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is, I think, that the Court will determine the matters as a Court. Its jurisdiction is enlarged, but all incidents of such jurisdiction including the right of appeal from its decision remain the same.'

16. In the same case, Viscount Haldane made the following statement of law on the subject : --

'When a question is stated to be referred to an established Court without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches.'

17. Lord Atkinson in the aforesaid case observed that the right of appeal in such cases is simply a case of extending the jurisdiction of an existing court with all its incidents, including a right of appeal, to a new matter closely resembling in character to those matters over which it has already jurisdiction as a court of law.

18. A similar question arose for decision before their Lordships of the Judicial Committee of the Privy Council in *Goonesinha v. The Honourable O. L. De Krestera*, (1945) 2 Mad U 314 : (AIR 1945 PC 83) on an appeal from the Supreme Court of Ceylon. The statute constituting the Supreme Court of Ceylon did not confer upon it any original jurisdiction but only appellate jurisdiction was conferred upon it in respect of matters enumerated in the statute. The law relating to disposal of election disputes provided that an election petition may be presented to the Supreme Court, which would be tried by the Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice. An election dispute came up for consideration before a Judge of the Supreme Court and against an order passed by the election Judge, an application for certiorari was moved before the Supreme

Court. It was held by their Lordships of the Privy Council in that case that cognizance of the election petition by the Supreme Court was an extension of or addition to the ordinary jurisdiction of that court and that certiorari could not be issued in respect of an order made by a Judge of that very court.

19. Following the principles laid down in the aforesaid cases, we find no difficulty in holding that the High Court while trying an election petition under Section 80A(2) of the Act is only acting in its ordinary jurisdiction as a Court and the power to hear election petitions and decide election disputes is conferred upon the High Court not by way of constituting a special jurisdiction but by extending the ordinary jurisdiction of the High Court to hear and decide election disputes. Thus, the single Judge of the High Court hearing and deciding an election petition functions as a High Court and not as a special Tribunal or as a special court or as a *persona designata*. The same view which we have taken above has also been taken by the Gujarat High Court in *Dr. Chhotalal Jivabhai Patel v. Vadilal Lallubhai Mehta* (1971) 12 Guj LR 850 and by the Madras High Court in *Kadiravan v. R, Thirumalaikumar* ILR (1970) 2 Mad 183. We are in respectful agreement with the views expressed by the aforesaid two High Courts so far as this aspect of the matter is concerned. While Mr. M. M. Singhvi appearing for the appellant relying upon the decision of the Gujarat High Court in *Dr. Chhotalal's* case and of the Madras High Court in *Kadiravan's* case argued that once the procedure and incidents of the High Court were made applicable to the proceedings in election petitions, then the rights of appeal would also become applicable, and that there was no reason to hold that in cases of election disputes, there was an exclusion by necessary implication of the right of appeal provided under Section 18 of the Ordinance. It was, however, argued by Mr. Mridul before us that in view of the provisions of Section 116A of the Act an appeal under Section 18 of the Ordinance is excluded by necessary implication. His submission was that the provisions of the Act constituted a self-contained Code and Part VI comprehensively dealt with the trial of election petitions and only right of appeal provided in Chapter IV-A of Part VI was available in respect of orders or judgments passed on election petitions and any other right of appeal was excluded by necessary implication. He further argued that an internal appeal to a Division Bench of the High Court in election disputes arising out of legislative assembly or parliamentary elections,

could not fit in the scheme of the special law dealing with the subject.

20. We have already held above that the jurisdiction to hear and decide election petitions was conferred upon the High Court as a court and not as a special Tribunal or a special court. It is merely an enlargement of the ordinary jurisdiction of the High Court so as to extend the same in respect of election matters. Ordinarily, as held in the National Telephone Co.'s case (1913 AC 546) when matters are referred to established Courts then all the ordinary incidents and procedure of that Court, including the right of appeal from orders passed in respect thereof, shall become applicable in respect of the new jurisdiction conferred upon the Court.

21. In *Adaikappa Chettiar v. Chandrasekhara Thewar* AIR 1948 PC 12 their Lordships of the Privy Council observed as under: --

'The true rule is that where a legal right is in dispute and the ordinary courts of the country are seized of such disputes, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.'

22. We may also refer in this connection to the observations of the Judicial Committee of the Privy Council in *Hem Singh v. Mahant Basant Das* AIR 1936 PC 93. In the Punjab Sikh Gurudwaras Act, an appeal was provided to the High Court. Against the order passed by the Lahore High Court, an appeal was filed before the Privy Council on a certificate of fitness granted by the High Court. A preliminary objection was taken to the competence of the appeal on the ground that the appeal before the High Court under the Act was a special jurisdiction conferred upon it and that, the High Court has acted as a Tribunal in respect of the adjudication of peculiar rights created by the Act in religious bodies unknown to the ordinary civil law. However, following the principles enunciated in the National Telephone Co.'s case (1913 AC 546) the Judicial Committee overruled the preliminary objection and observed that an appeal was provided in the Act to the High Court as an established court and as such all the incidents of that court, including the right of appeal from the orders thereof, would become applicable, as

the ordinary incidents of procedure of that court.

23. A similar view was also taken by their Lordships of the Supreme Court in *National Sewing Thread Co. Ltd. Chidambaram v. James Chadwick and Bros. Ltd.* AIR 1953 SC 357. In that case, the question arose as to whether a letters patent appeal under Clause 15 of the Letters Patent was maintainable in respect of the judgment of a single Judge of the High Court under Section 76 of the Trade Marks Act. The Supreme Court observed as under in the aforesaid case (Paras 7 & 17) :
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'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 CL 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act'.....

'The rights created by the Trade Marks Act are civil rights for the protection of persons carrying on trade under marks which have acquired reputation. The statute creates the Registrar a Tribunal for safeguarding these rights and for giving effect to the rights created by the Act, and the High Court as such without more has been given appellate jurisdiction over the decisions of this Tribunal. It is not easy to understand on what grounds it can be said that High Court while exercising this appellate jurisdiction has to exercise it in a manner different from its other appellate jurisdiction. It seems to us that this is merely an addition of a new subject-matter of appeal to the appellate jurisdiction already exercised by the High Court.'

24. However, where a statute creates new rights and liabilities, and prescribed special remedy for the enforcement of such rights, then by express words or by necessary implication a right of appeal, which is ordinarily available, may be excluded.

25. In *Wolver Hampton New Water Works Co. v. Hawkesford* (1859) 6 CB (NS) 336, Willes, J. stated the law on the subject as under : --

'There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases i.e. where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

26. This passage was cited with approval by the Earl of Halsbury, L.C. in *Pasmore v. The Os waldtwistle Urban District Council* 1898 AC 387 and by Lord Simonds in the case of *Culler v. Wandsworth Stadium Ltd.* 1949 AC 398. Classic enunciation of the law and classification of the cases in three classes was done by Willes, J. in the words of Viscount Haldane in the case of *Naville v. London 'Express' Newspaper Ltd.* 1919 AC 368 (HL) :

'With the precision which distinguished the utterances of that most accomplished lawyer.'

27. The aforesaid passage containing the classic classification was also cited with approval by the Supreme Court in *'The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* AIR 1975 SC 2238 and Untwalia, J. speaking for the Court, after an exhaustive discussion of the subject adopted the classification pointed by Willes, J.

28. It is well established that the nature of the rights and liabilities dealt with by the statute and the remedies provided there under, may, in case of doubt, be taken into consideration for determining as to whether, the ordinary jurisdiction is excluded or not. In the third class of cases pointed out by Willes, J., it has to be ascertained whether the statute in question deals with and regulates an already existing right or liability, or whether it creates a new right or liability which has no existence apart from the statute. If the statute is of the former category, the special remedy provided therein, subject to any provision for the exclusion of ordinary remedy, will only be construed as an alternative one; but where an absolutely new right or liability is created by a statute which gives a special remedy for enforcing it, the ordinary remedy is impliedly excluded.

29. In *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist.*, AIR 1952 SC 64, their Lordships of the Supreme Court following the dictum of Willes, J. quoted above, pointed out that the said rule was approved by the House of Lords in *Neville v. London Express Newspaper Ltd's case* (1919 AC 368) and was also reaffirmed by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant & Co.* 1935 AC532 and *Secretary of State v. Mask & Co.* 44 Cal WN 709 : (AIR 1940 PC 105). In Ponnuswami's case (AIR 1952 SC 64) their Lordships of the Supreme Court observed that the Representation of the People Act was a self-contained Code, so far as the elections are concerned and observed that it was now well recognised that where a new right or liability was created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. The following observations of their Lordships of the Supreme Court made in Ponnuswami's case may be usefully extracted in this context (Para 11) : --

'The [Representation of the People Act, 1951](#) which was passed by Parliament under Art. 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with election to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with 'the qualifications and disqualifications for membership.' Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of

elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. The provisions of the Act which are material to the present discussion are Sections 80, 100, 105 and 170, and the provisions of Chap. II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Art. 329(b), provides that 'no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.' Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that 'every order of the tribunal made under this Act shall be final and conclusive'. Section 170 provides that 'no civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election,' These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that any thing connected with elections can be questioned at an intermediate stage.'

30. In the aforesaid case, it was held that in view of the provisions of Article 329(b) of the Constitution, a writ of certiorari or mandamus under Article 226 of the Constitution was barred in respect of electoral matters as the Representation of the People Act read with Part XV of the Constitution was a code in itself and created rights and provides for the enforcement thereof by a special Tribunal to the exclusion of all the Courts. Their Lordships also pointed out as under in the aforesaid case (AIR 1952 SC 64) (Para 18):-

'(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. (2) strictly speaking it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the ' law which creates it.'

31. Thus, from the decision of their Lordships of the Supreme Court in Ponnuswami's case it clearly emerges that the right in respect of an election matter is not an ordinary civil right but it is a special one created by statute and that part VI of the Act constitutes a comprehensive and complete code on the subject.

32. In Union of India v. The Mohindra Supply Co., AIR 1962 SC 256, the question which arose for consideration before the Supreme Court was as to whether a Letters Patent appeal could be maintained against an order passed in appeal under Section 39(1) of the Arbitration Act, 1940 by a single Judge of the High Court. Sub-section (1) of Section 39 provides a right of appeal in respect of the matters specified therein. The provisions of Sub-section (2) of Section 39 are significant inasmuch as a second appeal is barred but the right of appeal to the Supreme Court is expressly saved. However, nothing has been provided in the statute in respect of the right of appeal under the Letters Patent against an order passed by a single Judge of the High Court under Section 39(1) and it was argued before their Lordships that an intra Court appeal was not prohibited.

33. Their Lordships of the Supreme Court took notice of the fact that the Arbitration Act of 1940 was a consolidating and amending Act and was for all purposes a code relating to Arbitration and observed as under rejecting the submission made before them : --

'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.'

'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 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 Letters Patent.'

34. The Judicial Committee of the Privy Council in *Narendra Nath Sircar v. Kamlabasini Dassi* (1896) 23 Ind App 18 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 of the Privy Council approved the observations made by Lord Herschell in *Bank of England v. Vagliano Brothers*, 1891 AC 107, to the following effect : --

'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; not to add words which are not to be found in the statute, or 'for which 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*, (1882) 10 Ind App 4 does not afford any adequate justification for departing from the plain and apparent intendment of the statute.'

35. In *South Asia Industries (P.) Ltd. v. S.B. Sarup Singh*, AIR 1965 SC 1442, again the question, as to whether an appeal under the Letters Patent was impliedly barred arose before their Lordships of the Supreme Court in relation to the provisions of Delhi Rent Control Act and their Lordships of the Supreme Court held that the expression 'final' employed in Section 43 of the Act prima facie connotes that no further appeal lies against it. Their Lordships observed as under (para 17):-

'It is true that the expression 'final' may have a restrictive meaning in other contexts, but in Section 43 of the Act such a restrictive meaning cannot be given, for Ch. VI of the Act provides for a hierarchy of tribunals for deciding disputes arising thereunder. The Act is a self-contained one and the intention of the legislature was to provide an exhaustive code for disposing of the appeals arising under the Act. The opening words of Section 43 of the Act 'save as otherwise expressly provided in this Act' emphasize the fact that the finality of the order cannot be questioned by resorting to something outside the Act.'

36. In *Smt. Preeti Parihar v. Kailash Singh*, 1977 WLN 357, this Court had occasion to consider the question as to whether a Letters Patent appeal was maintainable under the Hindu Marriage Act, 1955 in respect of an order passed by a learned single judge of this Court under Section 24 of that Act relating to the question of fixation of interim maintenance. One of us sitting with A. P. Sen, J., (as he then was), followed the dictum of Shah, J. in *Mohindra Supply Go's case* (AIR 1962 SC 256), and taking notice of the recent amendment introduced in the Hindu Marriage Act observed as under : --

'It will be fair to assume that by the amendments introduced in the Act by the provisions of the Amending Act No. 68 of 1976, the Legislature made a deliberate departure from the law prevailing before the amendment in respect of certain matters including the right of appeal. It appears that the Legislature intended by substituting new Section 28 by the Amending Act No. 68 of 1976 and making the same applicable to pending proceedings by enacting Section 39(1) therein, to expressly restrict the right of appeal to all decrees and orders passed under Sections 25 and 26 of the Act only, leading to the inevitable consequence that no

appeal would be maintainable against the order passed under other sections of the Act, apart from Sections 25 and 26 thereof. Mr. Bhoot, learned counsel for the Appellant, pointed out that in Section 39 of the Arbitration Act it was expressly provided that an appeal shall lie against the orders specified therein, and from no other orders and as such there was an express provision prohibiting appeals from orders other than those enumerated in that section. There is no doubt that such words do not occur in Section 28 of the Act as amended, but the necessary implication of substituting new section 28 providing an appeal against the orders passed under two sections only viz. Sections 25 and 26 of the Act, is that appeals against the orders passed under other Sections would not be maintainable. Our view is further reinforced when Section 28(2) of the Amended Act is read in conjunction with Section 4(b) of the Act. We, therefore, hold that an appeal against an order passed under any other section of the Act, except Sections 25 and 26 thereof, in any pending, proceeding is barred by necessary intendment, although there is no express prohibition in respect thereof. Of course all decrees are appealable as provided in Sub-section (1) of Section 29 of the Act. We may observe that if this view is not taken an anomalous situation would arise inasmuch as an order passed under Section 24 of the Act in pending proceedings by a District Judge would become final in the sense that no appeal would lie against it, yet if such an order under Section 24 of the Act is passed by a learned single Judge of this Court in a pending proceeding before him, then an appeal would lie against such an' order. We are of the view that the legislature never intended that such an anomalous situation should be created by amending Section 28 by the Amending Act and applying the same to pending proceedings, by virtue of the provisions of Section 39(1) thereof.'

37. A similar view was also taken by an another bench of this Court in Mohan Das v. Kamla Devi, 1978 Raj LW163: (AIR 1978 Raj 127), to which also A.P. Sen, J. was a party and it was observed as under in that case (para 7) : --

'The basic question for consideration is, whether by the Amending Act, 1976, the necessary intendment can be inferred by which a right of appeal has been taken away. In the scheme of the Amending Act, 1976, it is writ large that the litigation should be shortened and curtailed and by omission of the words, 'Section 47 or,'

the orders under Section 47, C.P.C. are no more appealable. The intention of the Legislature, therefore, is that the decree-holder should be able to reap the fruits of his decree as expeditiously as possible, and that the judgment-debtor should not be allowed to have a second inning by way of frivolous objections and thus defeat the very purpose of the decree. The Legislature further intended that execution matter should be disposed of as expeditiously as possible and hence these amendments. In our considered opinion, the necessary intendment can be clearly inferred from the fact that appeals against the orders under Section 47, C.P.C. are barred.'

38. In *Barraclough v. Brown*, 1897 AC 615, it was held by the House of Lords that the right conferred by the statute to recover the expenses was not a common law right, but a right created by the statute which itself provided for the remedy in a court of summary jurisdiction, and, therefore, the normal remedy of a direct approach to the High Court was excluded.

39. In *Durga Shanker Mehta v. Raghuraj Singh*, AIR 1954 SC 520, B. K. Mukherjea, J., as he then was, observed that the right of seeking election and sitting in Parliament or in a State Legislature is a creature of the Constitution and when the Constitution provides a special remedy for enforcing that right, no other remedy by ordinary action in a court of law is available to a person in regard to election disputes.

40. Thus, in cases where a statute creates a new right, and also prescribes the remedy for the enforcement of such a right, it must be held that the right and the remedy are given 'uno flatus' and the one cannot be dissociated from the other. If the litigant claims a right by virtue of a particular statute, which is not available at common law, he cannot, insist upon doing so by means other than those prescribed by the statute which alone confers the right. Where new rights are created by a statute which have no existence apart from the statute creating it and if the statute at the same time prescribes a particular method of enforcing such rights, then such remedy is the exclusive remedy available for enforcement of the new right created by the statute. The *National Telephone Co.'s case* (1913 AC 546) and other similar cases, where a statute had merely created new rights and

referred the matter to already existing courts, but did not create any specific or special remedy for the enforcement of such rights are clearly distinguishable from the case in hand. The Representation of the People Act not only provides a comprehensive machinery to deal with the election petitions in Part VI, but it also provides a special remedy under Section 116A in respect of the orders passed on election petitions. As the special law which creates the new right also provides a remedy by way of appeal under Section 116A it is not permissible to travel outside the special law for the purpose of finding out another remedy for interlocutory orders or judgments in election petitions filed under the Act. The provisions of the statute are comprehensive enough and are limited in respect of the right of appeal and even in the absence of an express provision excluding the ordinary remedy, an inference may arise that the remedy provided by the statute is the only remedy and the ordinary remedy is barred by necessary implication. The case before us squarely falls in the third category of cases referred to by Willes, J. The aggrieved party must be aware of the remedy provided in the statute for the enforcement of the rights created by the special Act. Sections 98 and 99 provide the type of orders which the High Court may pass at the conclusion of the trial of the election petition and Section 116A provides a right of appeal from every such order passed under Sections 98 and 99 to the Supreme Court on questions of law and facts. In our view, therefore, the ordinary incidents and procedure of the Court including the general right of appeal against the orders passed therein can be attracted only when the special Act creating new rights confers a jurisdiction to an established court without any words of limitation. Such cases fall within the second category of cases pointed out by Willes, J. But if the special Act also provides a specific right of appeal and is a self-contained code, the applicability of the general right of appeal would be impliedly barred.

41. The maxim, 'expression units est exclusion alterius' is a general rule of construction of statutes and is barred upon the probable intention of the legislature. Crawford in his treatise on the Construction of Statutes (1940 Edition) states the law on the subject as under : --

'As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It, therefore, logically follows that if a statute

enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance, if the statute in question enumerates the matters over which a court has jurisdiction no other matters may be included. Similarly, where a statute forbids the performance of certain things, only those things expressly mentioned are forbidden. So also if the statute directs that certain acts shall be done in a specified manner, or by certain person their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited.'

42. Sutherland in his treatise on Statutory Construction (3rd Edition, Vol. 2, Section 4915), made the following statement of law in this respect: --

'As the maxim is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature. 'When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names one of the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act.'

43. However, Sutherland has added, caution should be exercised in the application of the maxim 'expression unius est exclusio alterius.' There is no doubt that where the intention of the Legislature is otherwise clear or is expressly indicated in the statute then it would not be proper for the court to proceed upon the basis of the implied intention of the legislature. According to Broom's Legal Maxims (10th Edition) the aforesaid maxim enunciates one of the first principles applicable to the construction of written instruments, which has also been made applicable to the Construction of Statutes (at page 453) and that 'this principle is a rule of logic as well as a maxim of the law of very practical application, both in the construction of written instruments and verbal contracts.'

44. Marshall, C.J. observed in *Marbury v. Madison* (1801-08) 1 Cranch (5 US) 137; that affirmative words are often, in their operation, negative of other objects than those affirmed. Historically, it was first applied to legislation where the statute designated a particular remedy for enforcing a right or power which did not previously exist.

44A. Thus, it is well established that where a particular remedy is provided by a statute and the forum is also indicated therein then it must be sought in the particular forum and in the particular manner provided by the statute and all other forums and modes for seeking the remedy are excluded.

45. In *K. Venkateswara Rao v. Bekkam Narasimha Reddi*, AIR 1969 SC 872, it was held that an analysis of the provisions of the Act is sufficient to show that the trial of an election petition is not the same thing as the trial of a suit, even though the procedure applicable to the trial of election petition is the same as that of the trial of a suit. While dealing with the question of applicability of the provisions of the Limitation Act to an election petition under the Act, their Lordships of the Supreme Court observed as under (para 14) :--

'In our opinion however, the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.'

46. In *Prabhu Narayan v. A.K. Srivastava*, AIR 1975 SC 968, following the earlier decision in *Krishan Chander v. Ram Lal*, AIR 1973 SC 2513, it was held that an election petition and the affidavit filed in support thereof must be in accordance with the provisions of the Act and the rules made thereunder. But if the provisions of the High Court rules were infringed, the election petition could not be dismissed. It was observed that according to Section 86 of the Act, only petitions which do not comply with the provisions of Section 81 or Section 82 or Section 117 were liable to be dismissed and the failure to comply with the rules of the High Court in respect of affidavits could not be held to be fatal to the election petition.

47. It may be observed that where a statute gives a right and creates a liability which does not exist at common law, and the statute at the same time provides a special mode for enforcing such right or liability, then that mode alone must be pursued. No doubt the application of the maxim requires great deal of caution. However, as a general rule, in the ' interpretation of statutes, the mention of one thing implies the exclusion of another thing. It, therefore, logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. If the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited.

48. Learned counsel for the appellant referred to the two decisions of the Supreme Court in Harish Chandra Bajpai v. Triloki Singh, AIR 1957 SC 444, and in Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa, AIR 1958 SC 698, in support of his submission that the provisions of the Act are not exhaustive but both these cases held that the provisions of the Code of Civil Procedure are not excluded. It may be pointed out in this connection that the provisions of the Code of Civil Procedure have been expressly made applicable to the trial of election petitions in the same manner as they apply to the trial of suits, by the provisions of Section 87 so far as they are not inconsistent with the Act and the Rules made thereunder. Harish Chandra Bajpai's case related to an amendment of the election petition and it was observed in that case that Section 83(3) of the Act related only to amendment of particulars of the list and when the amendment sought was one of particulars of the list that Section would apply to the exclusion of any rule of the C.P.C. which might conflict with it, but where the amendment related not to particulars of the list but to other matters, that was a field which was not occupied by Section 83(3) and Order 6 Rule 17, C.P.C. would apply, in respect thereof. As the provisions of the Code of Civil Procedure have been made applicable to the trial of election petitions, subject to the provisions of the Act and the Rules made thereunder by Section 87 itself, as such the provisions of the Code of Civil Procedure are normally attracted to the trial of election petitions unless they are directly in conflict with the provisions of the Act.

49. In Basappa's case (AIR 1958 SC 698), it was held that the provisions of Order 23, Rule 1 C.P.C., relating to withdrawal of suits, could not be made applicable to the election petitions as they would come in conflict with the provisions of the Act. It was observed by Bhagwati, J., speaking for the Supreme Court, that the effect of the provisions contained in Sections 90 to 96 of the Act is to postulate that the Act is a self-contained code governing the trial of election petition or abandonment of a part of the claim, on the analogy of the provisions of Order 23, Rule 1, C.P.C., would not be permitted as there are specific provisions in the Act contained in Section 189 and Section 110 relating to withdrawal of election petitions. Their Lordships observed as under in the aforesaid case (para 19) : --

'On a due consideration of all these provisions, we are of opinion that the provisions of Order 23, Rule 1 do not apply to the election petitions and it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission, more so when such a withdrawal or abandonment of a part of the claim would have the effect' of depriving the returned candidate or any other party to the petition of the right of recrimination which had accrued to him under Sections 97 of the Act.'

50. It was argued before us by the learned counsel for the appellant that the right of appeal conferred by Section 116A of the Act was only available in respect of orders made under Section 98 or 99 of the Act and as such, the provisions of Section 116A do not preclude an internal appeal to a Division Bench of the High Court, which is available under Section 18 of the Ordinance. It was further submitted that some of the decisions taken during the trial of an election petition, which may not amount to an order falling under Section 98 or 99 may still be a judgment within the meaning of Letters Patent under Section 18 of the Ordinance and that there is no reason why the remedy by way of internal appeal could not be availed of in respect of such orders which amount to judgments. However, it was not disputed that in respect of orders made under Section 98 or 99, the only remedy available to the aggrieved party is by way of an appeal to the Supreme Court under Section 116A. We have referred above in detail to the legislative history of the provisions contained in Part VI and have noticed that in the original Act, no appeal was provided against the orders passed by the election tribunal and

Section 105 made each and every order passed by the election tribunal final and conclusive. Then in the year 1956, Section 116A was introduced and an appeal was provided to the High Court from orders made under Section 98 or 99. At that time, no appeal was provided against any other order passed by election tribunal, except the orders made under Section 98 or 99. In the year 1966, when the forum for hearing and deciding election disputes relating to legislative assembly and Parliamentary elections was altered and the jurisdiction was conferred on the High Court, Section 116A was accordingly modified and the appeal in respect of orders made under Section 98 or 99 was provided to the Supreme Court. Thus, from the very inception of the Act and even before 1966, no appeal was at all provided against any other order except those made under Section 98 or 99 of the Act. In our view, it would be preposterous to suggest that with the change of forum made by the Amending Act No. 47 of 1966, the Parliament intended to create a new right of appeal in respect of orders other than those made under Section 98 or 99, for which no appeal was ever provided earlier since the Act was passed in the year 1951.

51. It cannot be lost sight of that the legislature intended that the trial of election petitions relating to legislative assembly and Parliamentary elections should be speedy and such election disputes should be heard and disposed of as expeditiously as possible. The intention of the legislature in this respect is reflected by the provisions contained in Subsections (6) & (7) of Section 86 of the Act. Subsection (6) of Section 86 provides that as far as practicable, consistently with the interests of justice, the trial of an election petition shall be continued from day to day until its conclusion and if the High Court finds an adjournment of the trial beyond the following day to be necessary, then the reasons for such adjournment should be recorded. Sub-section (7) of Section 86 provides that the election petitions should be tried as expeditiously as possible and an endeavour should be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. It is apparent from a perusal of the aforesaid two sub-sections of Section 86 that the Parliament desired that the trial of an election petition should be concluded ordinarily within the period of 6 months from the date of the presentation of the election petition and considerable emphasis has been laid on the aspect that the trial should be as expeditious as

possible. Moreover, the High Court has been prohibited from granting frequent adjournments during the trial of an election petition, as it has been made incumbent upon the Court to record reasons if any adjournment beyond the following day is considered to be necessary. If intermediate orders, which could be termed as judgments within the meaning of the Letters Patent and Section 18 of the Ordinance, could be made subject-matter of an internal appeal within the High Court, then it would be rather difficult to conclude the trial of the election petition within the stipulated period of 6 months, as there might be one or two such internal appeals, as one or two orders passed during the trial, may amount to Judgments' and some time is bound to be taken by the Division Bench of the High Court in the disposal of an appeal which may be presented against the intermediate judgments. Thus, the intention of speedy trial and expeditious disposal of election disputes within 6 months, envisaged by the Parliament while enacting Sub-sections (6) and (7) of Section 86, would be nullified, if the view is accepted that by the Amending Act No. 47 of 1966, the Parliament intended to provide for an internal appeal in respect of orders which were made by the High Court, apart from those made under Section 98 or 99 of the Act, if they fall within the meaning of judgment under the Letters Patent. In our view, a survey of the legislative history of the provisions of part VI and particularly of Chapter 4-A leads to the inevitable conclusion that the Parliament intended to provide for only one appeal in respect of the orders passed on election petitions and that right of appeal was also restricted only to the orders made under Sections 98 and 99 of the Act. Apart from orders made under Sections 98 and 99 of the Act, no appeal was provided for and there is no reason to conclude that the Amending Act No. 47 of 1966, which changed the forum of trial of election petition from the District Judge to the High Court and consequently the forum for hearing an appeal from the High Court to the Supreme Court, intended to enlarge the right of preferring appeals and bestow a new right of appeal in respect of orders other than those made under Section 98 or 99 of the Act.

52. It is well established that the right of appeal is a creature of statute and no appeal could be entertained unless specifically provided for by law. Of course, if the jurisdiction of a court is enlarged without anything more than the right of appeal conferred under the general law under the Letters Patent would ordinarily be made

available and the dictum of the Privy Council in National Telephone Co.'s case (1913 AC 546) and other similar cases would become applicable. But as we have pointed out above, in the present case the special law relating to the trial of election petitions is a complete code in itself and while it has created the special rights and liabilities it has also provided for special remedies for the enforcement of such other rights and liabilities. In such cases, the special remedy provided by the statute must be resorted to and the applicability of the ordinary remedy available under the general law is impliedly barred. Chapter 4-A was specifically introduced in part VI of the Act to deal with matters relating to appeals and as the special provision has been made in respect of appeals against orders passed in the trial of election petition, there is no reason to simultaneously resort to the remedy available under the general law. If the act would not have contained any provision regarding appeals, then obviously the ordinary right of appeal available against the orders passed by a single Judge of the High Court would have been applicable and an appeal could have been preferred to a Division Bench of the High Court under Section 18 of the Ordinance, subject to a special leave petition before the Supreme Court under Article 136 of the Constitution. But once the special remedy has been indicated in the special law relating to elections creating new rights and liabilities then the ordinary remedy available under the general law cannot be made applicable. The Parliament in its wisdom thought that only one appeal should be provided in election disputes and that too not before the Division Bench of the High Court but before the Supreme Court. Even that right of appeal has been restricted to orders made under Section 98 or 99 while the remaining orders are intended to be left undisturbed until an appeal is filed against the final order passed under Section 98 or 99 of the Act. While the amendments introduced by the Act No. 47 of 1966 were made with the object that the election disputes relating to the legislative assembly and Parliamentary elections should be disposed of as speedily as possible and with that end in view the forum of trial of election petition was altered from the District Judge to the High Court with the same object only one appeal has been provided in such matters, which is to be heard by the highest court in the country. The very purpose of speedy disposal of election disputes would be set at naught if the argument of the learned counsel for the appellant is accepted that the ordinary remedy of appeal available under the

general law should also be allowed to be availed of.

53. Moreover, it would be incongruous to suggest that in respect of final orders made by the High Court under Section 98 or 99 of the Act, the appeal would lie to the Supreme Court but in respect of intermediate orders passed by the High Court during the trial of the election petition, which may amount to judgments within the meaning of the Letters Patent, an internal appeal can be preferred to the Division Bench of the High Court, so that a further appeal is possible under Article 136 of the Constitution to the Supreme Court and thus there may be two successive appeals in respect of such intermediate orders, while only one appeal is provided against final orders passed under Section 98 or 99 of the Act. If the Parliament at all intended to provide an appeal against other orders passed by the High Court, apart from orders made under Section 98 or 99, then it could have easily expressed its intention in this respect in Chapter 4-A of Part VI of the Act, which specifically and exclusively deals with the matter of appeals.

The omission on the part of the Parliament to refer to any other right of appeal in Chapter 4. A except to a limited right of appeal, only in respect of orders made by the High Court under Section 98 or 99, appears to be deliberate and conscious and the same cannot be brushed aside merely on the ground of draftsman's error. In view of the provisions of the bill which led to the passing of Act No. 47 of 1966, it appears that the matter was thoroughly considered by the Parliament before Section 116A was given its final shape.

54. It also appears rather inconceivable that appeals in respect of orders passed on the same election petition would lie to different forums, those, relating to intermediate judgments to a Division Bench of the High Court and the others relating to orders made under Section 98 or 99 of the Act to the Supreme Court. This circumstance has to be particularly viewed with reference to the fact that only orders under Section 98 or 99 were appealable even earlier to the introduction of the amendments made by Act No. 47 of 1966. After the amendment Act No. 27 of 1956 was passed and Section 116A was introduced providing the appeal in respect of orders made under Sections 98 and 99 to the Division Bench of the High Court, no appeal could be filed against an order passed by the District Judge

acting as the election tribunal to a single Judge of the High Court in exercise of the ordinary right of appeal conferred by the general law. If that view would have been taken then there would have been numerous appeals during the trial of election petitions. It was obviously to avoid all possible delays in the disposal of election petitions filed in respect of legislative assembly and Parliamentary elections that drastic changes were made in the Act by the Amending Act No. 47 of 1966 and changed the forum of trial of the election petition from the District Judge to the High Court in the hope and expectation that the election disputes would be settled with utmost speed.

55. It is important to note that Section 116A begins with a non-obstinate clause. The use of the words 'notwithstanding anything contained in any other law for the time being in force' gives the provisions contained in Section 116A regarding appeals an overriding effect over the provisions of other statutes, including Section 18 of the Ordinance. The use of the non-obstinate clause goes to show that the enactment following it will have its full effect and the provisions of any other law to the contrary would not be operative in the same field which is covered by the provisions of Section 116A of the Act. The provisions contained in any other law, including Section 18 of the Ordinance, are completely excluded so far as relating to appeals from orders made on election petitions. The Parliament has deliberately enacted the non-obstinate clause, while providing an appeal from the orders passed by a single Judge of the High Court on election petitions relating to legislative assembly and Parliamentary elections, so as to consciously exclude the operation of the provisions contained in Section 18 of the High Court Ordinance and analogous provisions contained in the Letters Patent to appeals from final orders and judgments passed by a single Judge of the High Court. It was suggested before us that non-obstinate clause contained in Section 116A merely excludes Letters Patent appeals in respect of orders made by the High Court under Section 98 or 99 of the Act and in cases of other orders amounting to judgments, passed during the trial of the election petitions, the non-obstinate clause has no application. In our view, there is no reason to give the non-obstinate clause occurring in Section 116A such a limited application as suggested by the learned counsel for the respondent. Nothing contained in Section 116A restricts the operation of the non-obstinate clause only to the orders passed by the High

Court under Section 98 or Section 99 of the Act. The narrow construction sought to be placed on the language of Section 116A does not appeal to us, as we are unable to find any words giving limited application to the non-obstante clause. In our view, the non-obstante clause should be allowed to have its full operation and the operation of any other provision relating to appeals from orders passed by a single Judge of the High Court on election petitions is completely barred. The ordinary rule of construction is that firstly what the enacting part of the section provides should be ascertained on a fair construction of the words used therein according to their natural and ordinary meaning and then the non-obstante clause is to be understood as operating to hold that anything contained in the relevant existing law which is inconsistent with the new enactment, is no longer applicable. Thus, the enacting part of Section 116A provides that an appeal shall lie from the orders made by a single Judge of the High Court directly to the Supreme Court and also specifies the kinds of orders in respect of which the right of appeal to the Supreme Court can be availed of. The application of the provision of the existing laws inconsistent with the new provisions contained in Section 116A which are contained in Section 18 of the Ordinance and analogous provisions of the Letters Patent of the various High Courts, in respect of appeals against orders passed by a single Judge of the High Court cannot be held applicable to orders passed by a single Judge of the High Court on election petitions on account of the non obstante clause. Of course, the right of appeal can be exercised only in respect of such orders which are enumerated in Section 116A and against no other orders, even if they amount to 'judgments' because once the provisions of Section 18 of the Ordinance are excluded from operation the right of appeal in respect of any orders made in election petitions shall be governed solely by the provisions of Section 116A. We are of the view that by specifying in Section 116A that an appeal would be maintainable against an order made by the High Court under Section 98 or Section 99 of the Act, the Parliament has restricted in no unambiguous terms that right of appeal to orders passed under the aforesaid two Sections only. Thus, it is amply clear that any other order passed by the High Court during the trial of the election petition could not be made subject-matter of an appeal irrespective of the fact that it may amount to a 'judgment' within the meaning of section 18 of the Ordinance.

56. We are fortified in our conclusion in this respect by the fact that where the Parliament desired to service an appeal in the Act apart from the provisions of Section 98 and Section 99, it has been provided that such an order shall be deemed to be an order passed under Section 98. As for example, in the case of orders passed under Sub-section (1) of Section 86, dismissing an election petition for non-compliance with the provisions of Section 81 or 82 or 117, it has been provided in the explanation appended to that section that such an order shall be 'deemed' to be an order made under clause (a) of Section 98. Thus, an order dismissing an election petition under Section 86(1), which otherwise would not have been appealable, has been made appealable by the introduction of a legal fiction deeming the order of dismissal passed under Section 86(1) as an order passed under clause (a) of Section 98.

The deeming provisions contained in the explanation added to Section 86(1)(c) is not without significance, as apart from making the order of dismissal passed under Section 86(1) appealable under Section 116A, the deeming provision has no other relevance. Thus, it appears to us that wherever the Parliament intended that any final order or judgment passed by a single Judge of the High Court on election petition should be appealable it could have brought such an order within the ambit of section 98 or Section 99 by providing a deeming clause, as has been done in the case of orders that may be passed under Section 86(1) of the Act, or the scope of Section 116A could have been otherwise enlarged by making specific provisions in respect thereof.

57. It is well settled that the Act is a self-contained code, which makes comprehensive provisions in detail regarding all matters relating to elections to the various legislatures in the country. The different parts of the Act deals with a wide variety of subjects. Part VI deals with disputes relating to elections and provides the manner of presentation of election petitions, the procedure to be adopted at their trial and the disposal thereof. Even the orders which can be passed by a court hearing an election petition have been enumerated in Sections 98 and 99. Thus, the Act is a self-sufficient enactment so far as the matters relating to elections are concerned; whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the

Rules made thereunder and it is needless to travel outside the provisions of the Act, except in so far as they have been referred to in the Act itself. The provisions of the Code of Civil Procedure, in so far as they are inconsistent with the provisions of the Act and the Rules made thereunder, have been expressly made applicable to the trial of election petitions by Section 87 of the Act. Similarly, the provisions of the Indian Evidence Act have also been made applicable to the trial of election petitions, by Sub-section (2) of Section 87. Harish Chandra's case (AIR 1957 SC 444) which has often been cited as an example of provisions outside the Act being made applicable, only goes to prove the rule that the Act deals with the entire subject-matter relating to elections. In Harish Chandra's case, the provisions of Rule 6, Order 17. C. P. C. were utilised for allowing an amendment of the election petition because the provisions of the Code of Civil Procedure have been made applicable to election petitions by virtue of the provisions of Section 87 (at that time Section 90(2)) of the Act. But the provisions of other enactments, including the provisions of the Limitation Act are excluded from application, as the Act is a comprehensive code dealing with all aspects of elections, particularly with the matter of presentation, hearing and disposal of election petitions, relating to election disputes arising out of legislative assembly and Parliamentary elections. As held by their Lordships of the Supreme Court in Durga Shanker's case (AIR 1954 SC 520), the trial of election disputes is undoubtedly a special jurisdiction, which has been conferred on election tribunal or court and once the election tribunal or the court is empowered and obliged to deal judicially with disputes arising out of or in connection with elections, the overriding power of the Supreme Court to grant special leave in proper cases or the power of other courts to entertain suits or other proceedings calling in question the election to the Parliament or the State legislature is wholly excluded. In K. Vankateswara Rao's case (AIR 1969 SC 872), while excluding the operation of the provisions of the Limitation Act from the proceedings relating to election petitions filed under the Act, their Lordships of the Supreme Court observed that the Act is a complete and self-contained code, which does not admit of the introduction of the principles or the provisions of law contained in the Limitation Act, Similar observations were made by their Lordships of the Supreme Court in Hukumdev v. Lalit Narain, AIR 1974 SC 480 and it was again emphasized that the Act confers a special

jurisdiction and is a complete code in itself and the nature of the remedy provided therein alone was intended by the legislature to govern the matters provided in the special law and the provisions of the Limitation Act as well as Section 18 of the Ordinance must be held to be necessarily excluded.

58. The rule enunciated by their Lordships of the Supreme Court in Mohindra Supply Co.'s case (AIR 1962 SC 256), should be applied while interpreting the provisions of the Act and the provisions of Section 116A should be construed without any assumption that it was not intended to alter the existing law relating to appeals. As the words of Section 116A are clear and explicit, they must be given their full effect and must be interpreted in the natural manner 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 common law in respect of appeals relating to election disputes and the law relating to appeals has been codified in Section 116A, which is the sole repository of the legislative intent in this matter. If any other interpretation is made and appeals against interlocutory or intermediate judgments passed during the trial of election petitions are allowed to be entertained by a Division Bench of the High Court, then incalculable harm is likely to be caused inasmuch as interested parties would be able to unduly prolong the life of election petitions by taking resort to frequent appeals in respect of intermediate judgments and would thus frustrate the very object of speedy disposal of election disputes. Section 80 to 122 make elaborate provisions from presentation of an election petition to security for costs and even for execution of orders for costs and where no specific provision has been made in Part VI, the provisions of the Code of Civil Procedure should be resorted to, by virtue of the provisions contained in Section 87 of the Act. Apart from the provisions of the Code of Civil Procedure and the provisions of the Evidence Act, the provisions of other laws cannot be made applicable to election petitions, including Section 18 of the Ordinance.

59. We may also refer to one more factor in this respect. Sub-section (2) of Section 80A provides that the election petition would be heard 'ordinarily' by a single Judge of the High Court. The very language of Section 80A(2) goes to show that, it is possible that in certain circumstances, the election petition may be heard

by a bench of two or more judges and in that case, an internal appeal against the intermediate judgments which may be passed during the course of the trial of the election petition shall be completely ruled out. Thus, in order to arrive at a harmonious construction, whether the election petition is heard by a single Judge or by a bench of two or more Judges, the legislative intention was clearly indicated in Section 116A that only one appeal would be provided and that too to the Supreme Court and further that the right of appeal would be restricted only to orders passed under Section 98 or 99. The intention of speedy disposal of election disputes and of avoiding all possible delay is sought to be achieved by reducing the number of appeals to one and that to the highest Court in the country and further by restricting the same to final orders passed under Section 98 or 99 of the Act.

60. From the aforesaid discussion the following circumstances emerge : --

(i) The right of vote or the right to stand as a candidate in an election is not a civil right, but is a creature of the statute or special law and must be subject to limitations imposed by it. The Representation of the People Act creates new rights and liabilities and provides the remedies for enforcing them. Normally it is not permissible to travel outside the provisions of the special law.

(ii) The Act is a self-contained code, so far as the elections to Legislative Assembly and Parliament are concerned and contains comprehensive provisions dealing with various aspects of the election process. Whenever we have to ascertain the true position in regard to matters connected with elections, we have only to look at the Act and the Rules made thereunder.

(iii) The Act is not a statute which merely confers a new jurisdiction or provides only a right to sue, without providing any particular forum or remedy. It is not a case of mere extension or enlargement of the jurisdiction of the High Court, without anything more, so as to attract the ordinary incident and the procedure of the court. But the Act creates rights and liabilities not existing at common law and at the same time provides special and particular remedy for enforcing it, including the right of appeal. As the remedies which could be enforced in respect of the new jurisdiction conferred on the court are enumerated in the Act itself, it is not possible

to avail of the remedies available under the general law for enforcement of the rights created by the special law. Thus, the Act falls under the third category of cases referred to by Willes, J. in *Wolver Hampton's case* (1859-6 C.B. (N.S.) 336).

(iv) The legislative history of the Act shows that emphasis has been laid on noninterference at any intermediate stage with the process of election as well as the conduct of the election petition.

(v) A consideration of the legislative history relating to various amendments made in the Act makes it amply clear that the intention of the Parliament has always been to avoid delay in disposal of election petitions and to provide for speedy and expeditious disposal of election disputes. If interlocutory judgments, falling within the provisions of Section 18 of the Ordinance or analogous provisions of the Letters Patent are allowed to be appealed against, then the proceedings in the election petitions are likely to be unduly delayed and the very object of speedy disposal thereof would be frustrated.

(vi) The scheme of the Act shows that provisions thereof have been arranged into parts and each part is divided into Chapters dealing with different aspects of the election process. Part VI deals with disputes relating to elections and Chapter IV-A, which consists of three sections, namely, Section 116A, Section 116B and Section 116C deals exclusively with the subject of appeals arising out of election disputes. The setting of the provisions relating to appeals contained in Section 116A goes to show that it contains the entire law relating to appeals in election matters arising out of the Act.

(vii) Article 327 of the Constitution vests the power of making laws in connection with elections to the Houses of Parliament or to the House of the Legislatures of the State, which includes the power of providing for trial of election disputes as also the right of appeal in such matters and the special law shall prevail to the exclusion of the ordinary remedy.

(viii) The disputes regarding elections are to be dealt with in accordance with the provisions of Part VI of the Act and the election petitions have to be presented, tried and disposed of and appeals in respect thereof are to be entertained and

decided in accordance with the provisions contained in Part VI of the Act. Section 87(1) of the Act makes the provisions of the Code of Civil Procedure applicable to the trial of the election petitions in the same manner as they are applicable to the trial of the suits., but subject to the provisions of the Act and the Rules made thereunder. Apart from the provisions of the Act and the provisions of the Code of Civil Procedure which have been made specifically applicable, the introduction of the principles or provisions of other laws like Limitation Act are completely ruled out. The situation as regards the applicability of the provisions of Section 18 of the Ordinance cannot be held to be different.

(ix) The application of the principle contained in the maxim 'Expression unius exclusio alterius' excludes all other forums and modes for seeking the remedy, when a particular remedy is provided by the statute and the forum is also indicated therein.

(x) Where the statute gives a new right and also prescribes the remedy for enforcement of such a right, it must be held that the right and the remedy are given 'uno flatu' and one cannot be dissociated from the other.

(xi) The right of appeal is creature of statute. No appeal can be entertained unless specifically provided for by law and where special right of appeal has been provided by the provisions of Section 116A, the ordinary right of appeal-against the final order or judgment passed by the learned single Judge on election petition is completely excluded.

(xii) The Parliament should not be intended to provide for two different forums for appeals against the orders passed on the very same election petition; in respect of orders passed under Section 98 or 99 an appeal would lie to the Supreme Court; while in case of other orders amounting to judgments, the appeal would lie to a different forum viz. the Division Bench of the High Court. The, legislature should not be deemed to provide for plurality of forums in respect of appeals preferred against orders passed in the same election petition.

(xiii) If an appeal against orders amounting to judgments may be held to be maintainable to the Division Bench of the High Court, the situation would be

inconceivable, inasmuch as in case of final orders passed under Section 98 or 99 of the Act only one appeal would lie directly to the Supreme Court; but then in case of intermediate judgments two appeals may be possible, one to the Division Bench of the High Court under Section 18 of the Ordinance and then a further appeal to the Supreme Court under Article 136 of the Constitution may be possible.

(xiv) The provision of Section 116A begins with a non obstante clause, debarring the applicability of the provisions of the existing laws, including Section 18 of the Ordinance or analogous provisions of the Letters Patent appeals filed in respect of orders passed on election petitions.

(xv) No appeal from any interlocutory order or intermediate judgment passed by the election Tribunal or the Court hearing the election petition was ever provided since the very inception of the Act in the year 1951. The only appeal which has been expressly provided by the statute is in respect of the orders passed by the election tribunal or the Court under Section 98 or 99 of the Act and it cannot be visualised that the Amending Act No. 47 of 1966 intended to enlarge the scope relating to the filing of an appeal in respect of orders not falling under Section 98 or 99.

(xvi) Wherever the legislatures desired that an appeal should lie apart from the orders falling under Section 98 or 99, meticulous care was taken to provide that such an order would be deemed to be an order passed under Section 98. The provisions of Section 86(1) are illustrative of the legislative intent.

61. For all the aforesaid reasons we hold that an intermediate appeal to the Division Bench of the High Court under Section 18 of the Rajasthan High Court Ordinance is excluded by necessary implication, in respect of an order passed during the trial of election petitions, which may amount to 'judgment' and that the only appeal which is permissible in respect of orders passed by the single Judge on an election petition tried in accordance with the provisions of the [Representation of the People Act, 1951](#) is that which has been provided by Section 116A of the said Act in respect of orders made under Section 98 or 99 of the Act and before the Supreme Court. We would, therefore, answer both the

questions Nos. 1 and 2 in the affirmative.

62. We feel that many of the aspects which we have adverted to above were not placed before their Lordships of the Gujarat and Madras High Courts while deciding Dr. Chhotalal's case ((1971) 12 Guj LR 850) and Kadiravan's case (ILR (1970) 2 Mad 183) and we are of the view that if all these aspects, which we have taken into consideration, would have been placed before their Lordships, the result would have been different.

QUESTION NO. 3 :

63. The argument of the learned counsel for the election petitioner is that the order granting amendment of the election petition is an interlocutory and interim order and as it is neither a preliminary nor a final judgment and as such no appeal lies against the said order passed by the learned single Judge under Section 18 of the Ordinance. There was a lot of controversy on the question as to whether any decision is a judgment within the meaning of Clause 15 of the Letters Patent, which provision is analogous to Section 18 of the Ordinance. While the Nagpur and Rangoon High Courts took the view that a 'judgment' means a decision finally adjudicating the rights of the parties, yet the Calcutta High Court in Justice of the Peace for Calcutta v. Oriental Gas Co. (1872) 8 Beng LR 433 and a Full Bench of the Madras High Court in Tuljaram v. Alagappa (1912) ILR35 Mad 1, took a more liberal construction and held that a 'judgment' is a decision determining the rights and liabilities of the parties affecting the merits of the controversy between the parties. Sir Richard Couch, C. J. observed as under in Justice of the Peace for Calcutta's case : --

'We think that 'judgment' means a decision which affects the merits of the question between the parties by determining some right or liability, may be either final or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined.'

64. In Tuljaram's case, Madras High Court expressed itself as under : --

'If the effect is to put an end to the suit or proceedings 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, the adjudication is a judgment.'

It was held in that case that an adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not a judgment within the meaning of Letters Patent. In that case, the order which was subject matter of appeal was an order for transfer of a suit.

65. In *Asrumati Debi v. Ruperidra Deb*, AIR 1953 SC198, the question which came up for consideration before their Lordships of the Supreme Court was as to whether an order refusing to rescind leave to sue granted under Clause 12 of the Letters Patent would amount to a judgment. In that case, the Supreme Court expressed the view that if leave under Clause 12 of the Letters Patent was rescinded, the suit would come to an end and if an order was made refusing to rescind the leave, the result would affect the parties on a vital point going to the root of the suit and would become final and decisive against the defendant, so far as the Court making the order was concerned. In *Asrumati Debi's* case their Lordships laid down a twin test which a decision of a Court must satisfy to fall within the classification of 'judgment under Clause 15 of the Letters Patent. Firstly, the judgment must be the final pronouncement which puts an end to the proceeding, so far as the Court dealing with it is concerned. Secondly, the judgment must involve the determination of some right or liability though it may not be necessary that there must be a decision on the merits.

66. In *M. S. Sirkar & Sons v. Powell & Co.* AIR 1956 Cal 630, the facts were that an amendment was allowed in a suit substituting a defendant described as a Company in place of the original defendant which was described as a firm. On appeal, the Calcutta High Court set aside the order holding that it was not merely a case of misdescription of the defendant. Chakravarti C. J. observed, on the question whether the order allowing an amendment was a 'judgment' containing the substitution of the company for a firm, that the order in question allowing an amendment was on a vital point concerning the merits of the case and the rights of

the newly created party and was, therefore, a judgment within the meaning of Clause 15 of the Letters Patent.

67. In *Shanti Kumar R. Ganji v. Home Insurance Company of New York*, AIR 1974 SC 1719, their Lordships of the Supreme Court upheld the views expressed by Chakravarti, C.J. in *M.S. Sirkar's case* (AIR 1956 Cal 630) and held that an amendment which takes away from the defendant the defence of immunity from any liability by reason of limitation and the order allowing such amendment became a judgment as it affected the merits of the question between the parties by determining the rights and liabilities based on limitation. Thus, the view taken by Sir Richard Couch in *Justice of the Peace for Calcutta's case* (1872-8 Beng LR 433) appears to have been ultimately accepted by the Supreme Court in *Shanti Kumar's case*, wherein their Lordships of the Supreme Court observed as under (paras 17 & 19):-

'The right to claim that an introduction of a cause of action by amendment is barred by limitation is founded on immunity from a liability. A right is an averment of entitlement arising out of legal rules. A legal right may be defined as an advantage or benefit conferred upon a person by a rule of law. Immunity in short is no liability. It is an immunity from the legal power of some other person. The correlative of immunity is disability. Disability means the absence of power. The appellant in the present case because of the limitation of the cause of action has no power to render the respondent liable for the alleged claim. The respondent has acquired by reason of limitation immunity from any liability..... In finding out whether the order is a judgment within the meaning of Clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the Court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability.'

68. In the present case, if the learned single Judge would have disallowed the application for amendment holding that a new averment introducing a prayer clause could not be allowed to be made in the election petition after the expiry of the period of limitation for the presentation thereof and if he would have accepted

the contention of the learned counsel for the returned candidate that election petition, as presented without a prayer clause, was no election petition in the eye of law, then the main election petition was liable to be dismissed, on this very ground. If such an order would have been passed, the election petition would have come to an end. If the learned single Judge has passed the order allowing an amendment to be made in the election petition introducing a prayer clause, then the result is necessarily adverse to the returned candidate on a vital point, which goes to the very root of the election petition and such a decision become final and conclusive between the parties, so far as the Court trying the election petition is concerned. Thus, following the decisions of their Lordships of the Supreme Court in *Asrumati Debi's case* (AIR 1953 SC 198) and *Shanti Kumar's case* (AIR 1974 SC 1719) referred to above, there can be no doubt that an order of the nature passed by the learned single Judge in the present case allowing the amendment of the election petition introducing a prayer clause amounts to determination of right or liability of the parties on a vital question and would amount to a 'judgment' within the meaning of Clause 15 of the Letters Patent and, therefore, under Section 18 of the Rajasthan High Court Ordinance. We would, therefore, answer the third question in the negative.

69. Even if an appeal in respect of the order passed by the learned single Judge would have been maintainable, we find no difficulty in upholding the order passed by the learned single Judge on merits. Learned counsel for the appellant argued that the election petition as presented on July 14, 1980 was no election petition in the eye of law as it contained no relief clause and made no prayer. According to the learned counsel there could be no petition without a prayer and the learned single Judge should not have allowed the amendment so as to add a new prayer clause which would have the effect of converting what was not a petition into a properly drafted election petition. On the other had learned counsel for the respondent submitted that intention of the petitioner was made amply clear by the averments or contents of the election petition, which was filed for calling in question the election of Ramdhan to the Rajasthan Legislative Assembly. It was urged that the court is empowered to grant proper relief on the basis of averments made in the election petition and further that the affidavit filed along with the election petition constituted a vital part thereof, and the intention of the petitioner

was clear from a perusal of the affidavit filed along with the election petition. It was lastly argued that originally, draft contained the relief clause but by typographical error the same was somehow missed in the election petition and when the mistake was discovered, the amendment of the election petition by adding the relief clause was sought and the learned single Judge was justified in allowing the bona fide typographical error (to be corrected) by addition of relief clause.

70. While Section 81 of the Act deals with the presentation of the petition and Section 82 specifies the persons who should be joined as respondents to the election petition, Section 83 prescribes that election petition shall contain a concise statement of the material facts on which the petitioner relies and in the case of corrupt practice the particulars thereof should be set forth. It is also provided that the election petition should be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings and that any Schedule or annexure of the petition shall also be signed by the petitioner and verified by him in the same manner as the petition. The proviso to Section 83(1)(c) requires that an affidavit should be filed in the prescribed form, where corrupt practice is alleged. Section 84 which relates to relief runs as under : --

'84. Relief that may be claimed by the petitioner.-- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claim a further declaration that he himself or any other candidate has been duly elected.'

A perusal of Section 84 goes to show that every election petitioner must claim a declaration that election of all or any of the returned candidates is void. However, a petitioner may also, in addition to the aforesaid relief, claim a further declaration if he so likes that he himself or any other candidate may be declared to have been duly elected. Thus, the first relief that the election of the returned candidate is void is compulsory in an election petition while the further relief of a declaration that the petitioner or any other candidate has been duly elected is optional and may or may not be claimed by the petitioner, in addition to the compulsory relief of declaration that the election of the returned candidate is void.

71. It may be pointed out here that Section 84 as it was originally contained in the Act, enabled the petitioner to claim any one of the following declarations : --

(a) That the election of the returned candidate is void;

(b) That the election of the returned candidate is void and that the petitioner or any other candidate is duly elected;

(c) That the election is wholly void.

72. Section 85 at that time provided that the election Tribunal shall dismiss the election petition, if it did not comply with the provisions of Section 81, 83 or Section 117 of the Act. Then the Act was amended by Amending Act No. 27 of 1956 and Section 84 was substituted in its present form. By Amending Act No. 47 of 1966, Section 85 was deleted and Section 86(1) made it mandatory for the High Court to dismiss the election petition which did not comply with the provisions of Section 81, 82 or 117. Thus, the election petition was earlier bound to be dismissed for noncompliance with the provisions of Sections 81, 83 and Section 117 which were later on modified to Sections 81, 82 and 117. But it may be emphasised that at no point of time Section 84 found place amongst the provisions, the noncompliance of which would have necessarily entitled dismissal of the election petition. Thus, except for Section 86(1), the election petition cannot be dismissed at the initial stage unless it discloses no cause of action and may be liable to be dismissed under Section 87 read with Order 7 Rule 11 C.P.C. But an election petition cannot be dismissed for noncompliance of the provisions of Section 84 as that Section was never included amongst the Sections whose noncompliance was considered fatal to the maintainability of the election petition.

73. The proviso to Section 83(1) makes it obligatory that where the election petition contains allegation of corrupt practice, then it shall also be accompanied by an affidavit. It has been held by their Lordships of the Supreme Court in *M. Kamalam v. A. Syed Mohd.*, AIR 1978 SC 840 that the election petition, for the purposes of Sub-section (3) of Section 81 is confined not only to election petition proper but also includes a schedule or annexure contemplated in Section 83(2) and a supporting affidavit referred to in the proviso to Section 83(1). Their

Lordships of the Supreme Court further observed that an election petition was one document consisting of two parts, one being the election petition proper and other being the affidavit referred to in the proviso to Section 83(1). In that case, the signature of the candidate was placed at the foot of the copy of the affidavit and their Lordships held that as the affidavit formed part of election petition, signatures placed by the petitioner at the foot of the copy of the affidavit was sufficient compliance with the requirements of Section 81(3). The same view was also taken in *K. M. Mani v. P. J. Antony*, AIR 1979 SC 234.

74. In *Sharif-ud-din v. Abdul Gani Lone*, (1980) 1 SCC 403 : (AIR 1980 SC 303) it was observed by the Supreme Court that the procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage, unless by according such permission to rectify the error later on another rule would be contravened. It was observed that where a provision of law prescribes that a certain act has to be done in a particular manner and it is coupled with another provision which also lays down that failure to comply with the said requirement would lead to specific consequence, such a requirement would be mandatory. As Section 86(1) provides that election petition shall be dismissed for noncompliance of the provisions of Sections 81, 82 and 117. But as there is no like provision for dismissal of election petition for noncompliance of Section 84 it is implied that the provisions of Section 84 are directory and that the defect, if any, can be cured by permitting necessary amendment.

75. In *Audesh Pratap Singh v. Brij Narain*, AIR 1954 All 245 it was observed that Section 84 was not included amongst those Sections, for the noncompliance of the provisions of which the election petition has to be dismissed and on the failure on the part of the petitioner to specify the precise declaration which he claims, the election Tribunal could allow an amendment. A similar view was taken in *Mahadeo Murlidhar v. Jwala Prasad Mishra*, AIR 1954 Nag 26 and it was held that as Section 84 was not included in the provisions on the non-compliance of which the petition is liable to be dismissed, the inference was that the petition could be brought in order by permitting the petitioner to make appropriate amendment in the relief clause.

76. As there is no special or particular provision contained in the Act making it mandatory for the court to dismiss a petition, if the proper relief is not claimed or if the relief claimed is obscure or vague, we shall have to rely upon the provisions of the Code of Civil Procedure to decide as to whether an amendment could have been allowed in the election petition so as to incorporate a prayer clause, which may not be in existence, as the provisions of the Code of Civil Procedure have been made applicable to the proceedings in election petitions filed under the Act by virtue of Section 87 of the Act. In *Krishna Chander v. Ram Lal*, (AIR 1973 SC 2513) it was observed by their Lordships of the Supreme Court that for the purposes of Section 83(l)(b), the election petition itself must contain all the particulars that are necessary and if the petition and the affidavit filed in respect thereof conform to the provisions of the Act and the Rules made thereunder, no fault can be found in the petition. Further in *Prabhu Narayan v. A.K. Srivastava*, (AIR 1975 SC 968), relying upon *Krishna Chander's* case referred to above, their Lordships observed that according to Section 86 of the Act only petitions which do not comply with the provisions of Section 81 or 82 or 117 are liable to be dismissed. In that case, the election petition was sought to be dismissed because it did not comply with the provisions of Rule 9 of the Rules framed by the Madhya Pradesh High Court regarding the trial of election petitions. It was held that noncompliance with the provisions of Rule 9 of the Madhya Pradesh High Court Rules would not be fatal to the maintainability of the election petition, as such noncompliance would not attract the provisions of Section 86. Similar observations were made in *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, AIR 1975 SC 1788 by their Lordships of the Supreme Court and it was pointed out that any defect in the affidavit filed with the election petition cannot form the subject-matter of objection based on Section 86 or Section 123(7) of the Act and that the election petition can only be dismissed for a 'substantial defect'. As there is no substantial defect in the election petition and if there is an error which is curable by making a suitable amendment, the election petition cannot be thrown out on the ground that it was not an election petition at all.

77. In *Harish Chandra Bajpai v. Triloki Singh*, (AIR 1957 SC 444) it was laid down that even provisions of Section 93(3) did not exclude the application of Order 6 Rule 17 C. P. C. for amendment of an election petition and it was pointed out that

Section 83(3) had a limited application relating to particulars in respect of illegal or corrupt practices. In other respect, the Tribunal or the court has the power under Order 6 Rule 17 C. P. C. to allow amendment of an election petition, but new grounds or charges should not be allowed to be raised so as to alter its character or to make it in substance a new petition, if another petition on those grounds would have become barred. The same view was taken in *Somant N. Bata-Krishna etc. v. George Feraandes*, AIR 1969 SC 1201 and it was observed that the power of amendment given in the Code of Civil Procedure can be invoked as Section 87 makes that procedure applicable as nearly as may be to the trial of election petitions, but the provision of the Act and the Rules must be taken to override the provisions of the Code of Civil Procedure, and that amendment could be allowed in respect of particulars but not relating to material facts and a new ground or charge cannot be made a ground of attack, as that would make a new petition.

78. In *Hardwarilal v. Kanwal Singh* AIR 1972 SC 515, it was held that an election petition could be dismissed apart from the provisions of Section 86, by reason of want of material facts under Section 87. It was held in that case that a suit can be dismissed, obviously under Order 7 Rule 11 C. P. C, if it did not furnish a cause of action, as every election petition has to be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, on account of the provisions of Section 87 of the Act. Thus, apart from Section 86 the election petition could also be dismissed under Section 87 for non-compliance with the mandatory provisions of the Code of Civil Procedure, for instance Order 7 Rule 11 C.P.C., in case the election petition does not disclose a cause of action. Mahajan C.J. observed in *Jagan Nath v. Jasvant Singh* AIR 1954 SC 210 that if the special law itself confers authority on the Election Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with the procedural requirements laid down by it, while the law prescribes dismissal as a penalty for not complying with some other provisions, then it is clear that where the law does not prescribe the consequences or does not lay down the penalty for non-compliance with certain procedural requirements, the jurisdiction of the Tribunal entrusted with the trial of the same is not affected.

79. Order 7 Rule 7 C.P.C. requires that the plaintiff should specify the relief claimed in the suit. But that is not a mandatory provision and non-compliance thereof cannot be fatal; If a proper relief has not been specified or the relief claimed is vague, the court is not bound to dismiss the suit for not complying with the provisions of Order 7 Rule 7 C.P.C. Patanjali Sastri, as he then was, observed in *Moolji Jaitha and Co. v. The Khandesh Spinning and Weaving Mills Co. Ltd.* AIR 1950 FC 83 that the function of a pleading is only to state material facts (Order 6 R. 2 C.P.C.) and it is for the court to determine the legal result of those facts and to mould the relief in accordance with that result. In the same case, Kania C.J. observed as under : --

'The inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which the reliefs asked in the prayers are based. A plaintiff may ask for a relief which a Court of equity may not grant. But I do not see any justification to non-suit the plaintiff because of such a prayer. That will be insisting on a form of pleading and not on the substance of the suit.'

80. A reading of the provisions of Section 84 goes to show that the prayer claiming a declaration that the election of the returned candidate is void is implicit in an election petition because Sub-section (1) of Section 81 provides that the election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 100. Sub-section (1) of Section 100 specifies the grounds on which the High Court shall declare the election of the returned candidate to be void. Section 100 provides for the grounds for seeking a further declaration, in addition to calling in question the election of the returned candidate, namely a declaration that the petitioner himself or any other candidate has been duly elected. That, further relief declaring the petitioner or such other candidate to be duly elected can only be allowed by the High Court 'after declaring the election of the returned candidate to be void', which relief has been specified in Sub-section (1) of Section 100. Thus, no election petition can be maintained under Section 81(1) unless it calls in question any election and on a ground contained in Section 100(1), so that the High Court may declare the

election of the returned candidate to be void. It is only when the petitioner desires to claim a further declaration that he or any other candidate has been duly elected, as specified Section 100, then Section 84 provides that claiming such further declaration is necessary. In this manner if an election petition is presented under Section 81(1) calling in question the election of the returned candidate to be void, then that relief, is implicit in the filing of the election petition, for without such relief no election petition could at all be maintained. It is because of this reason that Section 84 was amended by Act No. 27 of 1956 and it was provided that where a further declaration is desired, such relief should be sought in addition to claiming a declaration that the election of the returned candidate is void.

81. It appears that a defect in claiming a proper relief is similar to a defect in the presentation or signing or verification of the petition in accordance with the provisions of Order 6 Rules 14 and 15 C.P.C. as they are all defects relating to the form of the election petition. In the *Prince Line Ltd. v. The Trustees of the Port of Bombay*, AIR 1950 Bom 130 it was held that unless and until a plaint is presented to a Court complying with the provisions of Order 6 R. 14 and Order 6 R. 15 C.P.C. it cannot be held that a proper plaint has been presented to the court and unless such a proper plaint is presented to the court it cannot be held that a suit has been instituted in the court by a party. However, the court has got always a discretion if the plaint is not properly presented or not signed or verified in accordance with Order 6 Rule 14 or Order 6 Rule 15 C.P.C. to allow the plaintiff to remedy the defect, even at a later stage although the period of limitation for filing the suit may already have expired. Thus, to allow an amendment in respect of presentation or signing or verification of the pleading is a matter of discretion of the court and the same may be said regarding a defect in the relief claimed in the suit or the election petition. The prayer is ordinarily implicit in the filing of an election petition, namely, that the election of the returned candidate be declared to be void. We would make it clear that we are not expressing any opinion about absence of the further relief, which can be claimed under Section 84 regarding a declaration that the petitioner or any other candidate may be declared to be duly elected, as such a case is not before us.

82. In *Bhikaji Keshap Joshi v. Brijlal Nandlal Biyani*, AIR 1955 SC 610 there was a defect in the verification of the election petition regarding dates. It was held that it would be wrong exercise of discretionary power to dismiss the election petition on the sole ground of absence of date of verification. Their Lordships held that in such cases the petitioner should normally be called upon to remove the lacuna indicating the date of the original verification and the reason for its earlier omission. In the case of *Murarka Radhye Shyam Ram Kumar v. Roop Singh*, AIR 1964 SC 1545, it was held that a defect in verification in an election petition is a matter which comes within Clause (c) of Sub-section (1) of Section 53 and the defect can be cured in accordance with the principles of Code of Civil Procedure as such a defect does not attract Section 90(3) (new Section 86(1)), inasmuch as that provision does not refer to non-compliance with Section 83 a ground for dismissal of the election petition. In the aforesaid case their Lordships observed as under (para 81 : --

'One of these defects was that though the verification stated that the averments made in some of the paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on the basis of advice and information received by the petitioner from legal and other sources, the petitioner did not state in so many words that the advice and information received was believed by him to be true. The Election Tribunal took the view that this defect in verification was a matter which came within Clause (c) of Sub-section (1) of Section 83 and the defect could be removed in accordance with the principles of the Code of Civil Procedure, 1908. The Election Tribunal further held that such a defect did not attract Sub-section (3) of Section 90 inasmuch as that subsection does not refer to non-compliance with the provisions of Section 83 as a ground for dismissing an election petition. We agree with the view expressed by the Election Tribunal. We have pointed out that Sub-section (4) of Section 90 originally referred to three sections, namely, Sections 81, 83 and 117. It said that notwithstanding anything contained in Section 85 the Tribunal might dismiss an election petition which did not comply with the provisions of Section 81 Section 83 or Section 117. Section 90 was amended by Act 27 of 1956. Sub-section (3) then said that the Tribunal shall dismiss the election petition which does not comply with the provisions of Section 81 Section

82 or Section 117 notwithstanding that it has not been dismissed by the Election Commission under Section 85. There was a further amendment by Act 40 of 1961 and Sub-section (3) of Section 90 as it now stands has already been quoted by us in an earlier part of this judgment. It seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by el. (c) of Sub-section (1) of Section 83 is fatal to the maintainability of the petition.'

In *K. Venkateshwar Rao v. Bekkam Narasimha Reddy*, (AIR 1969 SC 872), it was observed that the Code of Civil Procedure has been made applicable to the trial of election petitions by virtue of the provisions of Section 87(1) and under Order 6 Rule 17 C.P.C., the court of law trying the suit has very wide powers in the matter of allowing amendments in pleadings and all amendments which will aid the court in disposing of the matters between the parties should as a rule be allowed. subject to the provisions of Section 86(5) of the Act, as no addition of parties is possible in the case of an election petition under Order 1 Rule 10 C.P.C except under the provisions of Section 86(4), because under Section 86(1) an election petition is bound to be dismissed for failure to comply with the provisions of Section 81 or Section 82.

83. The election petition cannot be dismissed in the present case under Order 7 Rule 11 C.P.C. on the ground of non-disclosure of a cause of action nor there is any ground for rejection of the petition under Section 86(1) of the Act. as there is no allegation of non-compliance with the provisions of Sections 81 82 or 117. In such circumstances, the court has to proceed with the trial of the election petition and it has discretion to allow or disallow an amendment prayed for in accordance with the provisions of Order 6 Rule 17, C.P.C.

84. So far as the facts of the present case are concerned, the heading of the petition shows that it was an election petition under Section 80 of the [Representation of the People Act, 1951](#). The contents of the petition leaves no doubt that it relates to the election of Ramdhan from the Ladnu Legislative Assembly Constituency. The contents of para 9 of the petition go to show that

election of Ramdhan is being challenged on the ground that he is guilty of corrupt practices specified in Section 123(7) (should be Section 123(6)) of the Act, for incurring expenditure in contravention of Section 77. The affidavit filed along with election petition makes it amply clear that the election petition was filed 'calling in question the election of Shri Ramdhan (respondent in the said petition)'. Thus, a bare reading of the petition and the affidavit together, which their Lordships of the Supreme Court have held to be one document consisting of two parts, makes it amply clear that the election petition was filed for the purpose of calling in question the election of Ramdhan, the returned candidate from the Ladnu Legislative Assembly Constituency. The learned single Judge has accepted the plea of the election petitioner that the absence of a relief clause in the original election petition was merely an inadvertent mistake and as such he allowed the same to be rectified by making an amendment. It is apparent that adding a relief clause by way of amendment would neither change the nature or character of the election petition nor it would constitute a new petition. In such circumstances, the learned single Judge was justified in allowing the amendment in the election petition regarding the addition of a prayer clause.

85. In the result, the appeal fails and is dismissed. The parties are left to bear their own costs of the proceedings in this appeal.