

Mohan Lal and Etc. Vs. Lal Chand and Etc.

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Court : Rajasthan

Decided On : Aug-02-2000

Reported in : AIR2001Raj87

Judge : N.N. Mathur and; A.K. Singh, JJ.

Acts : Rajasthan High Court Ordinance, 1949 - Sections 18; [Constitution of India](#) - Articles 3(3), 10(3), 226, 366, 366(10) and 372; [Government of India Act, 1935](#)

Appeal No. : Special Appeal Nos. 19 of 1998 (Civil) and 1050 of 1998 (Writ)

Appellant : Mohan Lal and Etc.

Respondent : Lal Chand and Etc.

Advocate for Def. : Vineet Kothari, Adv.

Advocate for Pet/Ap. : L.R. Mehta, Adv.

Judgement :

Mathur, J.

1. The Division Bench of this Court (Coram Hon'ble Mr. Justice R.R. Yadav and Hon'ble Mr. Justice A.S. Godara, as his Lordship then was) considered the following prima facie substantial and intricate questions as of general importance in these appeals:

- '1. Whether provision for special Appeals can be said to substitute of letters patent after enforcement of the Constitution?
2. Whether special Appeal is maintainable only against those matters which originally originate in the High Court with an avowed object to check and balance?
3. Whether provision relating to life of an ordinance enshrined under Government of India Act 1935 and thereafter under the Constitution are applicable to the Rajasthan High Court Ordinance 1949. If so, its effect in filing Special Appeals after expiry of six months from the date of issuance of Rajasthan High Court Ordinance 1949?
4. Whether Special Appeals can be filed under Section 18 of Rajasthan High Court Ordinance, 1949 even in those proceedings and suits which originate in subordinate Civil Courts or tribunals against which writ petition is filed under Articles 227 of the Constitution?
5. Whether Special Appeals under Section 18 of Rajasthan High Court Ordinance 1949 are maintainable against first Appeals decided by learned Single Judge of this Court under Section 96 CPC and Misc. appeals decided by Single Bench under Section 173 of Motor Vehicles Act?
6. Whether there is distinction between a writ petition filed under Article 226 and a writ petition filed under Article 227 of the Constitution arising out from subordinate Courts or tribunals and both can be treated to have originated before High Court in its original jurisdiction?'
2. A general notice was given to the learned members of the Bar to assist the Court in deciding the aforesaid question, if they so wish.
3. We have heard Mr. L.R. Mehta, Mr. M. Mridul, Senior Advocate, Mr. D.S. Shishodia, Senior Advocate and Mr. Vineet Kothari.
4. The above questions of law with respect to the special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 and that of Letters Patent appeal, have arisen in the context that though all the High Courts in India after the

commencement of Indian Constitution on 26th November, 1949, owes their existence under Articles 214 and 225, of the [Constitution of India](#), still their power of Letters Patent Appeal or Special Appeal flow from paramount. Charter under which they came into existence.

5. The phrase 'Letters Patent' denotes an open letter under governmental seal granting some right or privileges. Letters Patent Act. 1865 was enacted for establishing High Court of Judicature in India. By the said Act, the High Courts were established in Calcutta, Madras and Bombay. Thus, they are known as Charter High Courts. Clause 15 provided intra Court appeal named as Letters Patent appeal. The said Letters Patent appeal has continued in the Charter High Courts even after the adoption of the Indian Constitution. On formation of the State of Rajasthan in the year 1949, by process of integration of different princely States, the Rajasthan High Court came to be established under the Rajasthan High Court Ordinance, 1949. Clause 18 of the Ordinance also provides an Intra Court appeal, known as special appeal. Thus, in order to better appreciate the controversy involved, it would be convenient to acquaint with the brief history of the establishment of the Rajasthan High Court.

FACTS PERTAINING TO THE ESTABLISHMENT OF RAJASTHAN HIGH COURT :

6. The State of Rajasthan, as it is today, is the result of integration and amalgamation achieved in different stages. There were number of dynastic princely States each under a ruler. The India became free on 15th August, 1947. The Indian Independence Act, 1947 was enforced in place of the [Government of India Act, 1935](#) and in consequence thereof, Independence from British Rule and India became a sovereign country. Most of the rulers of the princely States voluntarily chose to join the Indian Union.

7. On 17-3-1948, Matsya Union comprising four States viz; Alwar, Bharatpur, Dholpur and Karauli was formed. On 25th of March, 1948, former Rajputana States Rulers of Banswara (including Kushagarh). Bundi, Dungarpur, Jhalawar, Kishangarh, Kotah, Pratabgarh, Shapura and Tonk States under covenant merged themselves initially into a Union of Nine States and formed as United State of

Rajasthan (First Rajasthan Union), which was inaugurated by Hon'ble Shri V.N. Gadgil, Union Minister, Government of India. Maha Rao Bhim Singh of Kota being the Rajpramukh. (The White Paper on Indian States 1950 Edition Pages 53 para 134). On 18-4-1948, the Udaipur also joined the Union to make it United State of Rajasthan with Maharana Udaipur as Rajpramukh and Maharaja Kota as Up Rajpramukh with Capital at Udaipur. This was inaugurated by Pandit Jawahar Lal Nehru, the then Prime Minister of India. (Page 53 para 135). The High Court of United State of Rajasthan was also established at Udaipur and Hon'ble Mr. Justice Kamala Kant Verma, retired Chief Justice of Allahabad High Court, was appointed as Chief Justice. The Rajpramukh of the United State of Rajasthan in exercise of powers conferred upon him under Article 10 of the Covenant by promulgation of Ordinance called United State of Rajasthan High Court Ordinance, 1948 (Ordinance No. 3 of 1948) established a High Court of Judicature for United Rajasthan w.e.f. the date of publication of the Ordinance in the United Rajasthan Gazette (Ordinance was published in the Gazette of Rajasthan vide Notification No. 26 dated 4th May, 1948). The Principal seat of the High Court was established at Udaipur and a Bench at Kotah vide Section 19 of the said Ordinance. The existing jurisdiction of High Courts of the covenanting States ceased to function and transferred to the High Court of Judicature for United State of Rajasthan vide Section 35 of the Ordinance. Law inconsistent with this Ordinance was repealed as per Section 38 of the said Ordinance, on 31-5-1948. His Highness the Raj Pramukh of the United State of Rajasthan Maharana Bhupal Singh executed the Instruments of Accession in cancellation of Instrument of Accession executed by the Rulers of 10 States specified in the Schedule in August, 1947, which was accepted by the Governor General of India on 13th September, 1948. On 6th Sept., 1948. His Highness the Raj Pramukh of the United State of Rajasthan appointed Justice Kamala Kant Verma as the Chief Justice of the Rajasthan High Court which (Order No. 3112 dated 6-9-1948) was published in the Rajasthan Gazette Vol. 1 No. 37 Part I dated 13-9-1948. On 30-3-1949, as ten major States in the former Rajputana Agency remained unintegrated, a fresh covenant was executed, providing for the merger of four new covenanting States Bikaner, Jaipur, Jaialmer and Jodhpur integrating their territories in one State, with common executive, legislature and Judiciary in the name of the United State of Rajasthan

(Greater Rajasthan) (Covenant XL published in white paper page 274). The Maharaja Shri Sawai Man Singh, the Ruler of Jaipur assumed the office of Raj Pramukh of the Newly re-constituted United State of Rajasthan by his proclamation published in Rajasthan Gazette Vol. 1 No. 1 of the Government of United State of Rajasthan (USR). On 7th April, 1949, the United State of Rajasthan formed with the merger of Jodhpur and other States (18) in the Union of India. His Highness Maharana Bhupal Singh as Maharaj Pramukh and His Highness Maharaja Sawai Man Singhji as Raj Pramukh of the United State of Rajasthan. On 15-4-1949. His Highness the Raj Pramukh of the United State of Rajasthan Maharajadhiraj Sawai Sir Man Singh of Jaipur executed the Instruments of Accession in cancellation of Instruments of Accession executed by the Rulers of the New Covenanting States and the Raj Pramukh of the United States of Rajasthan in August 1947 and May, 1948, which was accepted by the Governor General of India on 12th May, 1949. Article 9 of the Instrument of Accession reads as follows :

'Save as provided by or under this Instrument nothing contained in the Instrument shall affect the exercise of any powers, authority and rights enjoyed by the Raj Pramukh or the validity of any law for the time being in force in the United State or any part thereof.'

8. On 15-5-1949, Matsya States integrated with United State of Rajasthan. This completed the process of integration of all States. (Alra & Delwara Taluka of Sirohi District were transferred to Bombay). On 21st June, 1949. His Highness the Raj Pramukh promulgated Rajasthan High Court Ordinance 1949 (In short 'High Court Ordinance' or 'Ordinance') to provide for the establishment of a High Court of Judicature for Rajasthan for the peace and good Government of the United State of Rajasthan'. Hon'ble Chief Justice Shri Kamla Kanta Verma of the High Court of Judicature at Udaipur and thereafter of the Former Rajasthan was appointed as the First Chief Justice of the High Court of Judicature for Rajasthan at Jodhpur Clause 3 of the Ordinance. The Clause 10 of the Ordinance provides the place of sitting, as follows ;

'10. Place of Sitting -

(1) The High Court shall sit at Jodhpur and such other place or places, if any, as the Raj Pramukh may from time to time appoint, either permanently or for a specified period.

(2) One or more of such Judges of the High Court, as the Chief Justice may nominate, shall thereupon sit at such place or places accordingly.'

9. His Highness the Raj Pramukh in exercise of powers conferred by Sub-section (3) of Section 1 of the Ordinance issued a notification appointing. The 29th day of August, 1949, to be the date for the inauguration of High Court of Judicature for Rajasthan at Jodhpur. Another notification, No. 155/A/ JD/USR/ dated 25th August, 1949, was issued with respect to sittings at other places as follows :

'In pursuance of Sub-section (1) of Section 10 of the Rajasthan High Court Ordinance, 1949 (No. XV of 1949). His Highness the Raj Pramukh is pleased to direct that until further orders the High Court of Judicature for Rajasthan shall also sit simultaneously :--

(i) at Jaipur to dispose of the work arising in the Jaipur and Kotah Division, and

(ii) at Udaipur to dispose of the work arising in the Udaipur Division.'

10. On 29-8-1949, the High Court of Judicature for Rajasthan started functioning at Jodhpur and simultaneously at Jaipur and Udaipur in pursuance of Notifications dated 25th August, 1949 under Section 10 of the Rajasthan High Court Ordinance, 1949. Existing High Court of Judicature for Former United State of Rajasthan at Udaipur under the United State of Rajasthan High Court Ordinance, 1948 (Ordinance No. 3 of 1948) Letters Patent dated 9th September, 1940 and covenanting States abolished and ceased to function by operation of Section 49 (1) of the Ordinance.

11. On 26-11-1949, the people of India adopted, enacted and give to ourselves the [Constitution of India](#). On 26-1-1950, the [Constitution of India](#) enforced and under First Schedule of the Constitution Rajasthan became part 'B' State and as per Articles 214 and 225 of the Constitution, the High Court of Judicature for Rajasthan established under the High Court Ordinance of 1949 continued to be

the High Court for the Rajasthan State with its Bench at Jaipur and Udaipur. However, in view of the notification dated 8-5-1950 issued by the order of His Highness the Raj Pramukh in exercise of power under Sub-section (1) of Section 10 of the High Court Ordinance, 1949, all Benches of the High Court except at Jaipur ceased to operate with effect from 22-5-1950.

12. On 31-8-1956, the States Reorganisation Act, 1956 (Act No. 37 of 1956) (In short 'Reorganisation Act' or 'SRA') was promulgated by the President of India and in pursuance of Section 10 of the States Reorganisation Act, 1956 (Act No. 37 of 1956) as from the appointed day a New State to be known as the State of Rajasthan. On 27-10-1956, by a Presidential Order dated 27th October, 1956 issued under Section 51 (1) of the Reorganisation Act, it was directed that the principal seat of the High Court for the New State of Rajasthan shall be at Jodhpur. The 1st November, 1956 was appointed as the date for coming into force of The States Reorganisation Act, 1956. On the same day, Ajmer the centrally administered Part C State, Abu a part of the Bombay State and Sunnel of Madhya Bharat were integrated with Rajasthan. Chief Justice of Rajasthan High Court in exercise of his powers under Section 51 (3) of the Reorganisation Act, 1956 established a temporary Bench at Jaipur, From then, it is named as 'Rajasthan High Court'. The Chief Justice Rajasthan High Court by his order dated 14-7-1958 abolished the Jaipur Bench and the pending cases transferred to Jodhpur seat. However, it was restored with effect from 31st January, 1977 by the order of the President of India.

13. It emerges from the above narration that the present State of Rajasthan was integrated and formed under the Covenant of 1949 by all the then rules of the princely States of Rajasthan. The Covenant was sort of an interim constitutional arrangement. The relevant notification as published in the Rajasthan Gazette Extra Ordinary Vol. 1 No. 150 Jan. 14, 1950, reads as follows :

'No. F. 1 (13) - Pol. (C) /49. - The Covenant entered into by the Rulers of the Covenanting States for the reconstitution of the United State of Rajasthan, together with the supplementary agreement integrating the Matsya Union in the United State of Rajasthan is, hereby, published by general information.

(1) There shall be formed, as soon as practicable, a Constituent Assembly in such manner as the Raj Pramukh may, in constitution with the Government of India in the States Ministry, prescribe.

(2) It shall be the duty of the said Assembly to frame a Constitution for the United State within the framework of this Covenant and the [Constitution of India](#), and providing for a government responsible to the legislature.

(3) Until a Constitution so framed comes into operation after receiving the assent of the Raj Pramukh, the legislative authority of the United States shall vest in the Raj Pramukh who may promulgate ordinances for the peace and good government of the State or any part thereof, and any Ordinance so made shall have the like force of law as an Act passed by the Legislature of the United State.'

14. His Highness the Rajpramukh on 21st of January, 1949, promulgated an Ordinance to provide for establishment of High Court of Judicature for Rajasthan, known as 'the Rajasthan High Court Ordinance 1949'. The Ordinance has been defined under Clause (i) of the Ordinance of 1949, which provides as follows :

'1. Ordinance, definition of.-- Clause (51) of Section 32 of the Rajasthan General Clauses Act, 1955 defines the term 'Ordinance' as under :--

'(51) 'Ordinance' shall mean and include,--

(a) as respects any period before the commencement of the Constitution-

(i) an Ordinance lawfully made and promulgated by the Ruler or the Government of a covenanting State;

(ii) an Ordinance lawfully made and promulgated by the Rajpramukh of the former Rajasthan State in pursuance of the Covenant;

(iii) an Ordinance likewise made and promulgated by the Rajpramukh of the former Matsya State; and

(iv) an Ordinance likewise made and promulgated by the Rajpramukh of Rajasthan; and

(b) as respects the period after such commencement, an Ordinance made and promulgated under and in accordance with the provisions of the Constitution.

(i) by the Rajpramukh up to the 31st day of October, 1956; or

(ii) by the Governor on or after the first day of November, 1956.'

15. Thus, the expression 'an Ordinance so made' has the force of law as an Act passed by the Legislature of the United States of Rajasthan in Article 3(3) of the Covenant of 1949. Article 10(3) of the Covenant provides full legislative powers and authority to the Rajpramukh in the United State of Rajasthan. Thus, the Rajpramukh had the legislative competence and an Ordinance made and promulgated by him, has the valid force of law under Article 372 of the [Constitution of India](#). The existing law under Article 366(10) of the [Constitution of India](#) means any law, Ordinance, order, bye-law, rule or regulation made or passed before the commencement of the Constitution by any competent legislative authority having the power to make such law. Thus, all enactments termed as Ordinances, are existing law as termed under Article 372 of the Constitution. These Ordinances are made and promulgated by the Rajpramukh under the legislative powers conferred upon him before the commencement of the Constitution. Hence, such existing law i.e. Ordinances continues to be valid, even after commencement of the [Constitution of India](#). It is not to be confused with the life of an Ordinance under [Government of India Act, 1935](#).

16. The controversy on the point has been settled by the various decisions of this Court. A reference be made to State v. Babulal reported in AIR 1957 Raj 28 and Sardaria v. Rajasthan Board of Revenue reported in AIR 1954 Raj 224.

17. Now, in the backdrop of political and legislative history, we proceed to deal with the questions under reference.

QUESTION NO. 1:

18. Clause 18 of the Rajasthan High Court Ordinance, 1949 provides an intra Court appeal, known as Special Appeal. As discussed above, the provisions have continued even after coming into force of the Indian Constitution. The provisions of

Section 18 of the Ordinance are *pari materia* with Clause 15 of the Letters Patent Act, which applies to the Bombay High Court and certain other High Courts. Thus, Special Appeal is nothing but intra Court appeal like Letters Patent Appeal. Thus, though *stricto sensu*, Special Appeal cannot be said to be substitute of Letters Patent Appeal but it can be said to be analogous to Letters Patent Appeal. The question No. 1 is answered accordingly.

QUESTIONS NOS. 2 AND 4:

19. In order to appreciate the controversy raised in second and fourth questions, it would be appropriate to read Ordinance 18 of the Ordinance, which reads as follows :

'18. Appeal to the High Court from judgment of 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 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court. (2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate Jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal.'

20. An analysis of the said provision will show that under Ordinance 18, an appeal against a judgment of the learned single Judge is maintainable, if it does not fall in any of the following exceptional categories:

Firstly, it is not a judgment passed by the learned single Judge in exercise of the appellate jurisdiction in respect of-

- (a) a decree or order made in exercise of the appellate jurisdiction by a Court subject to superintendence of the High Court;
- (b) not being an order made in exercise of the revisional jurisdiction;
- (c) not being a sentence or order passed or made in exercise of the powers of superintendent under Section 43 or the exercise of criminal jurisdiction; and
- (d) a sentence and order passed or made in exercise of the criminal jurisdiction.

21. Thus, it is apparent that a special appeal is maintainable even against a judgment passed by the learned single Judge in exercise of the appellate jurisdiction in respect of decree or order passed by an original Civil Court. The prohibition is against the judgment of the learned single Judge passed in exercise of the appellate jurisdiction in respect of a decree or order made in exercise of the appellate jurisdiction by a Court subject to the superintendence of the High Court. Thus, it cannot be said that a special appeal is maintainable only against those matters which originally originate in the High Court.

22. As far as petition under Article 226 of the Constitution is concerned, it is definitely the original jurisdiction of the High Court and, therefore, a Special Appeal is maintainable under Section 18 of the Rajasthan High Court Ordinance. As regards Article 227 of the Constitution, a Division Bench of this Court in *Anandi Lal v. State of Rajasthan*, reported in (1996) 2 WLC 36 : (AIR 1996 Raj 154) relying on various decisions of the Apex Court, held that the proceedings under Article 227 of the Constitution is not an original proceeding and, as such, the intra Court appeal does not lie against a judgment of a learned single Judge. The Court, however, observed that as to whether a petition is under Article 226 or 227 of the Constitution, it will be for the High Court to examine the facts of each case and satisfy that the substantial part of the order under appeal is against Article 226 or Article 227 of the Constitution. The Court is also required to be further satisfied that the petition could be filed under both the articles i.e. Article 226 and Article 227. The *Hindustan Machine Tools Ltd. v. Industrial Tribunal, Jaipur* reported in (1997) 10 SCC 725 is the only case of the Apex Court, which directly deals with Section 18 of the Rajasthan High Court Ordinance, 1949. In the said case, a

question for consideration on facts was as to whether the writ petition filed before the High Court was a petition under Article 226 or Article 227 of the Constitution. The Division Bench of the High Court rejected the special appeal on the ground that writ petition filed before the single Judge was essentially a petition under Article 227 of the Constitution and that merely the label given by the petitioner would not be sufficient to hold that the petition was under Article 226 of the Constitution. The Apex Court after perusing the contents of the writ petition, found that the appellant was invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution and, therefore, the writ petition ought to have been treated as petition filed under Article 226 of the [Constitution of India](#).

23. Recently, the Apex Court in *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad* reported in (1999) 4 JT (SC) 546 : (AIR 1999 SC 2423), applying the observations of the Apex Court in *Umaji Keshao Meshram v. Radhikabai widow of Anandrao Banapurkar*, reported in 1986 Supp. SCC 401 : (AIR 1986 SC 1272), held that where the fact justifies a party filing an application either under Article 226 or Article 227 of the Constitution and the party chooses to file an application under both the Articles, in fairness and justice to such party in order not to deprive him of the valuable right of appeal, the court ought to treat the application as being under Article 226. The Court also took into consideration the observations of the Apex Court in *Umaji Keshao's case* (supra) that if in deciding the matter in final order, the Court gives ancillary direction, which may pertain to Article 227 of the Constitution, a party should not be deprived of his right to appeal under Clause 15 of the Letters Patent, where substantial part of the order sought to be appealed against is under Article 226 of the Constitution. Thus, the Apex Court, from the relevant averments made in the writ petition, found that the writ petition was under Articles 226 and 227 of the [Constitution of India](#). Thus, in our opinion, a party cannot be deprived of right of appeal under Section 18 of the Ordinance of 1949, simply because those proceedings and suit which originate in subordinate civil Court or tribunal, are filed under Article 227 of the Constitution. It is not the label but it is the contents of the petition, which matters. The questions No. 2 and 4 are answered accordingly.

Question No. 3 :

24. As already discussed, the High Court of Judicature for Rajasthan at Jodhpur was established by the Rajasthan High Court Ordinance No. 15 of 1949, promulgated by the Raj Pramukh in exercise of the powers conferred upon him by paragraph 3 of Article 10 of the Covenant under which an Ordinance has the force of law like any act passed by the legislature of the United State of Rajasthan. Considering the relevant provisions, a Division Bench of this Court in Shivdayal v. Raghubardayal reported in 1951 Raj LW 99, has held as under :

'The authority of the Raj Pramukh to make an Ordinance erecting and establishing a High Court cannot, therefore, be questioned, when all legislative authority has been vested in him under the Covenant.'

25. The first meeting of the Legislative Assembly of the Rajasthan took place in March, 1952. A bare reading of Article 213 makes it clear that the Article became applicable only to those States where there was a Legislative Assembly or both the houses of the legislature, as the case may be or in the case of State like Rajasthan where there was no Legislative Assembly, after such Legislative Assembly was constituted. Thus, it cannot be contended that after coming into force of the Constitution, the Raj Pramukh can only promulgate an Ordinance as provided by Article 213 of the [Constitution of India](#) requiring the formalities to be completed as mentioned in para 2 of the Article 213 of the [Constitution of India](#). Such a contention has been considered and rejected by a Division Bench of this Court in Sukhlal v. Revenue Board Rajasthan reported in 1954 Raj LW 152 : (AIR 1954 Raj 169). In view of this, the question pertaining to the life of the Ordinances does not survive. All the Special Appeals filed after the expiry of six months from the date of issuance of the Rajasthan High Court Ordinance, 1949 continues to survive. It appears that a confusion has arisen simply because of the use of the word 'Ordinances'. At the cost of repetition. It is stated that the expression 'Ordinances' so made, has the effect of the law as an Act passed by the legislature as the same has been promulgated by the Raj Pramukh under his legislative powers conferred upon him by Article 10(3) of the Covenant to be read with Article 372 and Article 366 of the [Constitution of India](#).

26. This question has been answered by the decision of the Full Bench of this Court in *New India Assurance Co. Ltd. v. Santosh* reported in (1995) 1 RLR 584. The Full Bench settled the controversy on the point holding as follows :

'We answer the question in affirmative that is to say that a special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, is maintainable against the judgment and order of the learned single Judge rendered in an appeal under Section 110-D of the Motor Vehicles Act, 1939 (now Section 173 of the Motor Vehicles Act, 1988).'

Question No. 6 :

27. This question has been dealt with in part while dealing with the questions No. 2 and 4. We may add that the question whether a party would be justified in invoking the jurisdiction of the High Court under Article 226 or against an order made by the tribunal, would take us to the scope of writ of certiorari and the nature of the order of the tribunal. A writ of certiorari would lie against the order of the subordinate Court and the inferior tribunals. The High Court has power of superintendence over its tribunals within its territory under Article 227 of the Constitution and, therefore, such tribunals are inferior tribunals and are amenable to writ Jurisdiction of the High Court under Article 226 of the [Constitution of India](#). So the writs of certiorari and prohibition can be issued against them. If such tribunals assume wrong jurisdiction, it can be corrected by the writ of prohibition and if it makes an order, which fall within the scope of writ of certiorari, the same can be quashed under Article 226 of the Constitution. The object of the writ of certiorari is that the jurisdiction of the inferior tribunal should be properly exercised. This writ is issued to direct the inferior Courts, tribunals or authorities to transmit to the Court record of proceedings pending therein for scrutiny and if necessary, for quashing the same. Thus, it is wrong to assume that an order of the tribunal can be challenged only under Article 227 of the Constitution, Against the order of the tribunal, a writ of certiorari or a writ in the nature of certiorari can be issued even under Article 226. A party would be justified in invoking the provisions of Article 226 of the Constitution for the writ of certiorari or writ of prohibition against the order made by the tribunal. Thus, in our view, on perusal of the averments of the pleadings of a

petitioner, if it is found that a petition is maintainable under Article 226 of the Constitution against the order of the subordinate Court or the tribunal, it can be treated to have originated before the High Court in its original jurisdiction.

28. Thus, we answer the questions as follows :

Question No. 1 :

A Special Appeal under Ordinance 18 of the Rajasthan High Court Ordinance, 1949, is not a substitute of Letters Patent Appeal but is analogous to a Letters Patent Appeal.

Question No. 2 :

No. It cannot be said that a Special Appeal is maintainable only against those matters, which originally originate in the High Court.

Question No. 3 :

The reference to [Government of India Act, 1935](#) is not relevant with reference to the Rajasthan High Court Ordinance, 1949. The expression 'ordinance' made in the present context has the effect of law as an Act passed by the Legislature and it is an existing law and, as such, the expiry of the Ordinance after a period of six months, has no relevance.

Question No. 4 :

A Special appeal is not maintainable against a writ petition filed before a single Judge, the averments of which shows that it is purely under Article 227 of the Constitution.

Question No. 5 :

An appeal against the judgment of the learned single Judge under Section 96, CPC and Miscellaneous Appeal decided by the learned single Judge under Section 173 of the Motor Vehicles Act, is maintainable.

Question No. 6 :

The question whether a petition is under Article 226 or 227 of the Constitution, will depend upon averments made in the pleadings of a writ petition before a learned single Judge.

29. Having answered the questions, framed by this Court, we now direct that both the Special Appeals be laid before the appropriate Bench for hearing and disposal on merit.

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