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Court : Delhi

Decided On : Oct-19-2012

Judge : Sanjay Kishan Kaul, the Honourable Mr. Justice Rajiv Sahai Endlaw & Rajiv Shakdher

Appeal No. : FAO (OS) NO. 684 OF 2010 & CM NO. 21681 OF 2010 & LPA NOS. 879 OF 2010, 19 OF 2011 & CM NOS. 22171 OF 2010 & 352 OF 2011

Appellant : Jaswinder Singh and Another

Respondent : Mrigendra Pritam Vikramsingh Steiner and Others

Judgement :

SANJAY KISHAN KAUL, J.

1. The interplay of the jurisdictions to be exercised under Letters Patent and as the First Appellate Court while dealing with non-appealable orders passed by the learned Single Judge in exercise of ordinary original civil jurisdiction has given rise to the present reference. The question, thus, which arises for consideration is:

“If an order is passed by the learned single Judge in exercise of Ordinary Original Civil Jurisdiction which is not appealable under Section 104 (1) read with Order 43 (1) of the Code of Civil Procedure, 1908 (hereinafter referred to as the “said Code”) whether the remedy would be under Section 10 (1) of the Delhi High Court

Act, 1966 (hereinafter referred to as the “said Act”) or under Clause 10 of the Letters Patent?”

2. The occasion to make this reference arose on account of the fact that at various times pronouncements of this Court have treated it as an “either” or “or” situation while entertaining an appeal, i.e., an appeal would be maintainable from a non-appealable order provided it satisfies certain tests and such an appeal may arise under one or the other of the aforesaid provisions and, thus, the matter was never examined further. A Division Bench of this Court posed this question and subsequently analyzed it while making the reference vide order dated 17.4.2012 so that the controversy could be put at rest and a consistent practice is followed. This also became necessary in a sense for assisting in, both, the administration of justice and court management as the Chief Justice of the High Court is the Master of the Roster and as per allocation of roster, normally, the letters patent jurisdiction is exercised by a different Bench than the Bench exercising jurisdiction under First Appealable Orders from Original Side [FAO (OS)].

3. The Delhi High Court was constituted under the said Act. It being one of the newer High Courts, it had the benefit of being constituted under a legislation of the Indian Parliament. In terms of Section 5 (1) of the said Act, the Delhi High Court has been conferred with all such original, appellate and other jurisdiction, as under the law in force immediately before being exercised in respect of the territories by the High Court of Punjab. However, the Punjab High Court did not have any ordinary original civil jurisdiction. Therefore, Section 5 (2) of the said Act which begins with a non obstante clause conferred an additional ordinary original civil jurisdiction in every suit the value of which exceeded Rs.25,000.00, on the Delhi High Court. This limit has been subsequently revised and stands at Rs.20.00 lakh now. Section 5 of the said Act reads as under:

“5. Jurisdiction of High Court of Delhi-(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the territories by the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.”

4. Section 9 of the said Act makes the law in force in respect of form of writs and other processes used, issued or awarded by the High Court of Punjab to apply to Delhi with necessary modifications.

5. Section 10 (1) of the said Act, ordinary original civil jurisdiction having been conferred in terms of Section 5 (2) of the said Act, provides for an appeal to lie before a Division Bench of the Delhi High Court from an order of the learned Single Judge of this Court. In terms of Section 10 (2) of the said Act, which is subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, Single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi. Section 10 of the said Act reads as under:

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

(2) Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.”

6. In terms of Section 16 of the said Act, all proceedings pending in subordinate courts in relation to any civil suit referred to as per sub-section (2) of Section 5 of the said Act was to stand transferred to the High Court of Delhi.

7. The effect of the aforesaid provisions in a nutshell, thus, is that the appellate jurisdiction is conferred on the Division Bench qua appealable orders in view of provisions of Section 5 (2) read with Section 10 (1) of the said Act. The question, thus, would be whether even non-appealable orders under the said Code can be appealed against if they satisfy certain tests which have been set out hereinafter and whether such an appeal would lie under sub-section (1) of Section 10 of the said Act.

8. Simultaneously insofar as powers of the Single Judges or the Division Benches qua matters other than ordinary original civil jurisdiction are concerned, Section 5 (1) read with Section 10 (2) of the said Act would make the law enforceable in the High Court of Punjab to apply as was prevalent immediately prior to the said Act coming into force.

9. Now coming to the issue of exercise of letter patent - **Where does the expression 'Letters Patent' originate from?**

Meaning and Origin of Letters Patent:

10. The term 'letters patent' is derived from the Latin term 'literae patentes' meaning "open letters". Primarily, a letters patent would denote a public grant from the sovereign to a subject, conferring the right to land, a franchise, a title, liberty, or some other endowment. Black's Law Dictionary, Garner, Bryan A. (9th Edn., 2009), p. 1016 These were letters addressed by the sovereign 'to all whom these presents shall come,' reciting a grant of some dignity, office, franchise, or other privilege that has been given by the sovereign to the patentee. Chisum, Donald S. et al., Principles of Patent Law 2 (1998) The historical perspective of this is available in the National Archives of the United Kingdom, which is a Government Department and an Executive Agency of the Ministry of Justice. It sets out that 'Letters Patent' were letters issued 'open' or 'patent' expressing the sovereign's will on a variety of matters of public interest, sealed with the sovereign's great seal pendent. The patent rolls record the issue of letters patent from the reign of King John. The entries on the rolls are of a very diverse nature referring to the royal prerogative, revenue, the differential negotiations with foreign princes and states, letters of protection, of credence and of safe-conduct and the appointments and

powers of ambassadors. There are also grants and confirmations of liberties, offices, privileges, lands and wardships, both to public bodies and to private individuals, charters of incorporation and so on. Letters patent are stated to have been much reduced in the course of the 19th and 20th centuries, as the kinds of instruments produced thereby became obsolete or their administration passed to other bodies. The use of great seals was much restricted, often replaced by alternative devices.

Evolution of the system of Courts in India: Post 1600:

11. In reference to the development of the courts system in India during British times, their origin is in the ancient English Statutes and Charters granted by the sovereign of England to the East India Company, which was established by the Charter of Queen Elizabeth I in 1600. The Company was established for purposes of trading only. But by that Charter, it was also empowered to make laws for the good governance of the Company, its employees, officers, etc. and for the better advancement and continuance of trading and to impose punishments and fines in enforcement of those laws. The Chapter on 'Prerogative Writs and the Calcutta High Court in the pre-Constitution Era' in the Book released by the High Court at Calcutta on Completion of 150 years, Published by the Indian Law Institute, West Bengal State Unit Majesty".

12. The Company, however, gradually established factories and acquired territories in India and for the protection of its territories and for further acquisition, it was empowered to raise an army, make war and peace and exercise governmental functions. It subsequently obtained the grant of Diwani of Bengal, Bihar and Orissa from the Emperor Shah Alam in 1765. The British Crown, however, did not all at once and directly assume the sovereign powers, but as between the Crown and the Company, it was distinctly agreed by an Act of 1813 that the possession and Government of British territories was being continued by the Company without prejudice to the undoubted sovereignty of the Crown. It is this sovereignty, which was reiterated by the Government of India Act, 1833 and that is why the Company remained in possession of territories "in trust for His

13. It is with the growth of the East India Company that it became necessary to establish Courts of Justice within the territories under the control of the Company. The Letters Patent of 1726 granted by King George I recited that the Company by strict and equal distribution of justice, very much encouraged not only the British subjects but subjects of princes and natives to resort to and settle the disputes both in civil causes and criminal matters. These Letters Patent established and constituted three several Courts of record known as 'Mayor's Court' (consisting of a Mayor and nine (9) Aldermen) in Fort William in Bengal, in Madras and in Bombay. The right of appeal was to the Governor General in Council. These Letters Patent of 1726 were surrendered by the East India Company to King George II and the Company obtained fresh Letters Patent in 1753 by which the Mayor's Courts were limited in their civil jurisdiction to suits between persons not natives and suits between natives were directed not to be entertained by them unless by consent of the parties.

Rise of Chartered and Non-Chartered High Courts:

14. On the East India Company securing the Dewani of Bengal, Bihar and Orissa in 1765, it set up courts of civil and criminal jurisdiction for the Mofussil. The Mofussil Dewani Adalat was established for administration of civil justice, with a right of appeal to the Sadar Dewani Adalat, Calcutta. These Courts were not the King's Courts but were the Company's Courts established by the Company on the authority derived from the Mogul Emperor. This had nothing to do with the Mayor's Court or its successors.

15. In 1773 came the Regulating Act, the object of which was to impose control over the Company and its servants both in England and in India. It provided for the appointment of the Governor General and Council in Bengal and empowered the Crown by Charter to erect and establish a Supreme Court at Fort William with full power and authority to exercise and perform all civil, criminal, admiralty and ecclesiastical jurisdictions in the Presidency towns. Pursuant to this Act, King George III issued a Charter establishing a Court of Record called the "Supreme Court of Judicature at Fort William in Bengal" dated 26th March, 1774. The clauses of the Charter show that the jurisdiction of the Supreme Court extended

throughout the Presidency towns. The Supreme Court was, thus, a Crown's Court. Subsequently, the Supreme Courts at Madras and Bombay were established by King George II on 26th December 1800 and 8th December 1823 respectively.

16. The result of the aforesaid was that while the then Supreme Courts exercised jurisdiction in the Presidency towns, the then Sadar Courts exercised jurisdiction in the Mofussils.

17. It is after the Sepoy Mutiny of 1857 that the British Crown took over the territories and the Government of British India from the Company by the Government of India Act, 1858 and, thus, India came to be governed directly by and in the name of the Crown. In 1861, the Indian High Courts Act was passed by the British Parliament which authorized Her Majesty Queen Victoria by Letters Patent to erect and establish High Courts in the three presidencies which were to "have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same presidency abolished under this Act at the time of abolition of such last mentioned Courts." Thus, the Supreme Courts and the Courts of Sadar Dewani Adalat and Sadar Nizamat (Faujdari) Adalat were abolished. It is in exercise of powers under the Indian High Courts Act, 1861 that the Letters Patent of 1862 was issued establishing the High Courts in the three Presidency towns of Calcutta, Bombay and Madras. In 1865, the Indian High Courts Act was amended so as to authorize the the Governor General in Council to alter the local limits of jurisdiction of High Courts and to exercise jurisdiction beyond the limits of the Presidency. This is so far as the Presidency towns are concerned.

18. Now coming to the provinces of Punjab and Delhi, it is by an Act by the Governor General of India in Council (Act No. Xxiii of 1865) that the then Chief Court of Punjab was established and the Provinces of Punjab and Delhi were subject to its jurisdiction. This position continued till the Letters Patent constituting the High Court of Judicature at Lahore dated 21st March 1919 was issued by which the High Court at Lahore was established for the provinces of Punjab and Delhi. The Punjab High Court after 1947, continued to be governed by this Letters Patent and the Union Territory of Delhi continued to be within the jurisdiction of the

Punjab High Court. Clause 9 of the Letters Patent conferred extraordinary original civil jurisdiction on the High Court.

19. What is the distinction between the Original Civil Jurisdiction conferred in the Presidency towns and the Lahore High Court? The significant difference is that on the establishment of the Chartered High Court in the Presidency towns there were two kinds of original jurisdiction which were transferred to it - (i) as was being exercised by the Supreme Court in the Presidency towns; (ii) as was being exercised by the Sadar Courts. On the other hand when the Non-Chartered High Courts were established by different Letters Patent including the Lahore High Court it was the second one only which was transferred. The Supreme Courts established in the Presidency towns prior to the establishment of the Chartered High Courts were exercising the ordinary civil jurisdiction in the territories of the Presidency towns while in the Mofussil, the principal Courts of original jurisdiction were the District Courts. It may be added here that on the other hand establishment of City Civil Courts in the Presidency towns, the lower pecuniary jurisdiction from the ordinary civil jurisdiction of the Chartered High Courts came to be vested in those city civil courts.

20. The aforesaid is the reason why there is a difference in the wording of the Letters Patent qua the three Presidency towns, which are almost identical, while on the other hand there are the Letters Patent of the Courts like the Lahore High Court.

21. There is an interesting discussion on this issue in a Division Bench Judgment of this Court in *Shanta Sabharwal Vs. Sushila Sabharwal and Ors.* AIR 1979 Delhi 153, in the opinion rendered by Mr. Justice V.S. Deshpande (Retd.), the then Chief Justice which in turn is based on a Constitution Bench judgment of the Supreme Court in *Aswini Kumar Ghosh Vs. Arabinda Bose* (1953) 4 SCR 1 by the then Chief Justice of India, Mr. Justice M. Patanjali Sastri. The relevant portion is reproduced hereinunder:

“5. After having given earnest consideration to the submission, we find that (1) the decision of the Supreme Court does not change the legal position existing at the time the Full Bench decision was given, (2) additional reasons are found to

support those on which the Full Bench decision rested, and (3) even otherwise reference to a larger Bench would not be expedient.

(1) The decision of the Supreme Court in Shanti Kumar's case (AIR 1974 SC 1719) does not define the meaning of the word "Judgment" as used in cl.(15) of the Bombay and cl.(10) of the Delhi Letters Patent. It only reaffirms the proposition already established in *Central Bank of India v. Gokal Chand*, AIR 1967 SC 799, that it is only an order which affects the rights and liabilities of parties which can be called a Judgment. The uncertainty exists because of the difficulty in drawing the line between an order which is merely procedural and an order which affects any rights and liabilities of the parties. This has been the situation from before the Full Bench Judgment as also thereafter and is likely to continue even after the Supreme Court decision.

(2) The view that the maintainability of an appeal against an order of a single Judge of this Court acting in ordinary original jurisdiction is governed by the Code of Civil Procedure and not by the Letters Patent is supported by additional reasons which were not mentioned in the Full Bench decision.

(A) In the *Public Trustee v. Rajeshwar Tyagi*, ILR (1973) 1 Delhi 29. (AIR 1972 Delhi 362), a Division Bench of this Court to which one of us (V.S. Deshpande, J. as he then was) was a party, pointed out the following distinction, namely (i) when a Judgment is delivered by a single Judge exercising the jurisdiction inherited from the Punjab High Court under S. 5(1) of the Delhi High Court Act then the appeal against it lies under cl.(10) of the Letters Patent; and (ii) on the other hand, when a single Judge delivers a Judgment in exercise of the ordinary original civil jurisdiction obtained by this Court from the Subordinate Court under S. 5(2) of the Delhi High Court Act, then the appeal lies under S. 10(1) of the Act. This position is undisputed. The question that arises is whether the meaning of the word "Judgment" in Section 10(1) of the Delhi High Court Act is the same as that in cl.(10) of the Letters Patent.

(B) As pointed out in *Aswini Kumar Ghosh v. Arabinda Bose*, (1953) SCR 1 : AIR 1952 SC 369, by Sastri, C.J. from page 6 onwards, there is a historical distinction between original jurisdiction exercised by two groups of High Courts in India. This

corresponds to the jurisdiction exercised by the Courts preceding these two groups of High Courts. The then Supreme Courts exercised jurisdiction in the Presidency Towns and the then Sudder Courts exercise jurisdiction the Mofussil. When the Supreme Courts and Sudder Courts were abolished on the one hand their two different kinds of original jurisdiction were transferred to what may be called the Non-Chartered High Courts by different Letters Patent which were substantially different from the Letters Patent of the Chartered High Courts. The former Supreme Courts themselves exercised ordinary civil jurisdiction in the Presidency Towns. In the Mofussil, however, the principal Courts of original jurisdiction were the District Courts. The Chartered High Courts succeeding the Supreme Courts in the Presidency Towns obtained an ordinary original civil jurisdiction till then exercised by the Supreme Courts. This continued till city Civil Courts were established in the Presidency Towns taking away the lower pecuniary jurisdiction from the ordinary civil jurisdiction of these Chartered High Courts in the Presidency Towns. A challenge to the validity of the Bombay City Civil Courts Act was negatived by the Supreme Court in the State of Bombay v. Narottamdas Jethabhai, AIR 1951 SC 69. It is significant to note that the ordinary civil jurisdiction was possessed by the Supreme Courts and the Chartered High Courts from the very beginning. Later, a part of it was transferred to the City Civil Courts which corresponded to the District Courts in the Mofussil.”

Amicus Curiae Plea:

22. We may note that Mr. A.S. Chandhiok, learned ASG appointed as *Amicus Curiae* in this matter, emphasised this distinction between the Letters Patent issued qua the Chartered High Courts and the Non-Chartered High Courts. This distinction is premised on the existence of the ordinary civil jurisdiction being always possessed by the Supreme Court and thereafter by the Chartered High Courts from the very inception. Thus, the High Courts established outside the Presidency towns inherited only the appellate jurisdiction of the Sadar Courts while the principal Courts of original jurisdiction continued to be the District Courts. This is the reason why the Letters Patent of the Chartered High Courts containing clauses 11 and 12 prescribed the local limits of ordinary original civil jurisdiction (clause 11) and conferring the said ordinary original civil jurisdiction on the

Chartered Courts (clause 12). There are no corresponding provisions in the Letters Patent of the other High Courts to these clauses. Clause 13 refers to the Extraordinary Original Civil Jurisdiction of the High Courts which was exercised when the suits were transferred from District Courts to the High Courts while clause 15 refers to powers conferred of appeal on the High Courts over the decision of a Judge of the High Court. These appeals under Clause 15 came from two different jurisdictions - (i) ordinary original civil jurisdiction which existed from the inception of the Chartered High Courts inherited from the then Supreme Courts, and (ii) the extraordinary original civil jurisdiction which is not really an original jurisdiction. Thus, in the case Non-Chartered High Courts when a suit was transferred from a subordinate Court to a Non-Chartered High Court such a High Court could try the suit in its original civil jurisdiction..

23. It was the submission of the learned ASG that the Letters Patent of other High Courts did not give any ordinary original civil jurisdiction to these Courts because none was inherited from the Sadar Courts. The extraordinary civil jurisdiction was possessed by the Non-Chartered High Courts because every High Court had the power to transfer to itself a suit from a subordinate court within its territorial jurisdiction.

24. It was, thus, the submission of the learned ASG that clause 10 of the Letters Patent as applicable to Delhi can be invoked before the Division Bench only from such of the decisions of the learned Single Judge which were given in the suits transferred from the subordinate courts in case of Non-Chartered High Courts as the question of any appeal under the said provisions from High Courts did not possess ordinary original civil jurisdiction. This is stated to be so despite the fact that clause 10 of the Letters Patent of the Non-Chartered High Courts including the High Court of Lahore was phrased in the same language as clause 15 of the Letters Patent of the Chartered High Courts.

25. It would be appropriate to notice at this stage that a Full Bench of this Court in C.S. Agarwal and Ors. Vs. State and Ors. 2011 VII AD (Delhi) 265 while dealing with the issue of maintainability of LPA in respect of writ orders passed in quashing proceedings/criminal proceedings has discussed the scope of Section 5

read with Section 10 of the said Act. After extracting the provisions it opined as under:

“6. In addition to the appeals that can be filed under Section 10 of the DHC Act, three more categories of appeals lie to this Court.

Thus the following four categories constitute appellate jurisdiction of the Delhi High Court:

- a. Firstly, appeals under Section 10 of the DHC Act but they are limited only to those judgments referable to Section 5(2) thereof.
- b. Secondly, appeals under the Code of Civil Procedure.
- c. Thirdly, appeals under different statutes, which itself provides for an appeal.
- d. Fourthly, appeals under Clause 10 of the Letters Patent.”

26. To complete the narration we reproduce clause 10 of the Letters Patent which reads as follows:

“10. Appeals to the High Court from Judges of the Court - And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore 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 said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant of Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the

exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or Successors in our or their Privy Council, as hereinafter provided.”

27. Learned ASG sought to make appropriate distinction between exercise of ordinary original civil jurisdiction and extraordinary civil jurisdiction that the appeal under Section 10 (1) of the said Act would lie from an order passed in exercise of the ordinary original civil jurisdiction while clause 10 of the Letters Patent would apply in case of exercise of extraordinary original civil jurisdiction by the writ court.

28. The question as to the maintainability of appeals from orders passed by a learned Judge exercising ordinary original civil jurisdiction which are not appealable under Order 43 Rule 1 of the said Code has been examined by the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania* (1981) 4 SCC 8. An appeal was held to be maintainable if the order was within the meaning of “Judgment”. If the order purports to decide valuable rights of parties and what are called the orders of the moment, an appeal was held to be maintainable if it is not categorized in the nature of an order which is appealable under Order 43 Rule 1 of the said Code. The expression “Judgment” has been held to be capable of taking three different characters. It may be a final Judgment, it may be a preliminary Judgment or it may be an intermediary or interlocutory Judgment. The third category are cases which possess characteristics and trappings of finality and may have direct and immediate effect rather than an indirect or remote one. It is against such orders also that an appeal has been held to be maintainable while discussing the scope of clause 15 of the Letters Patent of the Chartered High Courts as the case emanated from the Bombay High Court. As noticed aforesaid that clause 10 of the Letters Patent of Lahore as applicable to Delhi is distinct on view of the absence of any ordinary original civil jurisdiction in the High Court Judicature at Lahore, not being a Presidency town.

29. The divergent view emanating in this Court including the observations of the Supreme Court has been discussed in the order of reference dated 17.4.2012 as

under:

“The subsequent pronouncements referred to the earlier Full Bench decisions in University of Delhi Vs. Hafiz Mohd. 1972 AIR Del 102 and Union of India Vs. A.S. Dhupia AIR 1970 Delhi 108 to hold that they were no more good law in view of the Judgment in Shah Babulal Khimji case (supra). The said Judgment was held to have been impliedly over-ruled in Jawahar Engineering Co. Vs. Jawahar AIR 1984 Delhi 129. The Supreme Court in Jugal Kishore Paliwal Vs. S. Satjit Singh (1984) 1 SCC 358 expressly over-ruled the Full Bench decision of the Delhi High Court in University of Delhi Vs. Hafiz Mohd. case (supra).

The Division Bench of this Court in Abdul Hamid Vs. Charanjit 60 (1995) DLT 847, however, held that the appeal against an order passed by the learned single Judge on the Original Side was maintainable under Clause 10 of the Letters Patent of the Court. This according to the learned ASG was the beginning of divergence on this aspect. Similarly in Jindal Exports Ltd. Vs. Furest Day Lawson 1999 (51) DRJ 170 a Division Bench held that an LPA would be maintainable against an order passed under the Arbitration Act, 1940 in view of Clause 10 of the Letters Patent. The subsequent Division Bench Judgment in R.K. Sharma Vs. Ashok Nagar Welfare Association AIR 2001 Del 272 inter-changeably used the expression of Clause 10 of the Letters Patent and Section 10(1) of the said Act to say that the appeal would be maintainable in view of these two provisions read together. The same is the reasoning in Sahil Singh Vs. Harpreet Singh 118 (2005) DLT 350, Crocodile Vs. Lacoste 2008 (100) DRJ 547 and Magotteaux Industries Pvtl Ltd. and Ors. Vs. AIA Engineering Ltd. 155 (2008) DLT 73.

In Jyotika Kumar Vs. Anil Soni 156 (2009) DLT 685 an appeal against an order dismissing an application under Order 7 Rule 11 of the said Code has been held to be maintainable in view of Shah Babulal Khimji case (supra) and in relation to the Arbitration Act, the matter has been examined in Jindal Exports Vs. Furest Day Lawson AIR 2010 Del 135.”

CONCLUSION

30. In our view the issue of maintainability of an appeal under clause 10 of the Letters Patent as against Section 10 (1) of the said Act is vitally connected with the nature of powers conferred under the Letters Patent to the Delhi High Court. The distinction between the Letters Patent of the Chartered High Courts and the Non-Chartered High Courts have, thus, been set out in detail aforesaid because there is a fundamental difference between the two Letters Patents. This fundamental difference arises from the jurisdictions being exercised by the then existing courts prior to the Letters Patent by which the Chartered and the Non-Chartered High Courts were established. The Chartered High Courts were preceded by the Supreme Courts established in the presidency towns. These Supreme Courts had both the original jurisdiction and the appellate jurisdiction qua the territory in question. Thus, when the Chartered High Courts were established there were two kinds of original jurisdiction which were transferred to it, i.e., one being exercised by the Supreme Court in presidency towns as well as one being exercised by the Sadar Courts in the Mofussil areas. This is also reflected in the Letters Patents qua the presidency towns where clauses 11 and 12 of the Letters Patent were included.

31. Insofar as the Non-Chartered High Courts like the Lahore High Court are concerned, there was absence of the aforesaid clauses of the Letters Patent on account of the fact that there were no prior Supreme Courts enjoying original jurisdiction but the similar system of Mofussil and Sadar Courts prevailed. Thus, the Letters Patent of the Chartered High Courts conferred only the appellate jurisdiction of the Sadar Courts and if original jurisdiction would have been conferred up to a pecuniary limit, such jurisdiction would have been created for the first time under the Letters Patent. This, however, did not arise as no such original jurisdiction was created. The similarity of clause 10 of the Non-Chartered High Courts vis-a-vis clause 15 of the Chartered High Courts would, thus, make no difference in view of the absence of existence of any original jurisdiction when the Letters Patent were established. Thus, when clause 10 of the Letters Patent refers to an appeal from the Single Judge to a Division Bench, it is not relatable to the exercise of ordinary original civil jurisdiction by the learned Single Judge of the Court. This is the reason that when writ jurisdictions are being exercised as extraordinary original civil jurisdiction, an appeal lies to the Division Bench under

Clause 10 of the Letters Patent as applicable to Delhi which in turn had inherited the same from the parent Lahore High Court.

32. The establishment of the ordinary original civil jurisdiction in the Delhi High Court is a sequitur to the statutory provisions of the said Act. It is in terms of Section 5 (2) of the said Act that ordinary original civil jurisdiction was conferred on the Delhi High Court for suits exceeding Rs.25,000.00 (now the limit is Rs.20.00 lakh). When such ordinary original civil jurisdiction is, thus, exercised by a learned Single Judge of this Court, the appeal is provided for under Section 10 (1) of the said Act. Sub-Section (2) of Section 10 of the said Act has been made subject to the provisions of sub-section (1), and provides that the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab would apply in relation to the High Court of Delhi.

33. It is in respect of the aforesaid prevalent legal position that consequences of the Supreme Court Judgment in Shah Babulal Khimji case (supra) have to be examined. The apex court examined the issue whether any appeal can arise from exercise of ordinary original civil jurisdiction by the learned Single Judge if it is not an appealable order under Section 104 read with Order 43 Rule 1 of the said Code. The Judgment in Shah Babulal Khimji case (supra) thereafter proceeded to discuss the nature of Judgments and orders which may flow from the pen of the learned Single Judge while exercising ordinary original civil jurisdiction. It is in this context that the labels of final Judgment, preliminary Judgment and an intermediary or interlocutory Judgment were given. The final Judgment was one by which the suit or action brought by the plaintiff is dismissed or decreed in part or full. On the other hand, a preliminary Judgment is said to have two forms, i.e., where a suit may be dismissed on preliminary objections raised by the opposite party or the preliminary objections are decided in a manner where the view taken would result in non-termination of the suit and the suit is to be tried on merits but the rejection of the preliminary objections adversely affects a valuable right inasmuch as it defers the right to get the suit terminated on a preliminary ground. Lastly, intermediary or interlocutory Judgments are of the nature which may not be an interlocutory order within the meaning of Order 43 Rule 1 of the said Code but

possess the characteristics and trappings of finality and is treated as a Judgment. Of course here a reference has been made to the definition of a 'Judgment' within the meaning of Letters patent so as to be appealable to a larger Bench.

34. An important aspect is that the aforesaid discussion takes place in the context of Clause 15 of the Letters Patent of the Bombay High Court. As explained aforesaid there is a distinction between Clause 15 of the Letters Patent of the Bombay High Court and Clause 10 of the Letters Patent as applicable to Delhi inasmuch as the Lahore High Court never enjoyed the original jurisdiction, only the appellate jurisdiction having been conferred on it from the Sadar Courts upon its establishment.

35. We are of the view that principles enunciated in Shah Babulal Khimji case (supra) as to what would constitute an appealable

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must equally apply to Section 10 of the said Act so that if an order, which is not an appealable order under the said Code, but otherwise satisfies the tests as laid down in Shah Babulal Khimji case (supra), in other words effects vital and valuable rights or, is an order which, decides matters of moment; the remedy of appeal to the Division Bench would equally be available.

36. In Shanta Sabharwal case (supra) the Division Bench of this Court while placing reliance on the Judgment of the Supreme Court in Aswini Kumar case (supra) referred to the distinction drawn between the powers conferred under Section 5 (1) and Section 5 (2) of the said Act. In this behalf the Judgment in Public Trustee case (supra) of a Division Bench of this Court was relied upon which observed that when a Judgment is delivered by a Single Judge exercising the jurisdiction inherited from the Punjab High Court under Section 5 (1) of the said Act then the appeal against it lies under Clause 10 of the Letters Patent and on the other hand, when a Single Judge delivers a Judgment in exercise of the ordinary original civil jurisdiction obtained by this Court from the Subordinate Court under Section 5 (2) of the said Act, then the appeal lies under Section 10 (1) of the said Act. Thereafter it proceeded to refer to the meaning of the word "Judgment" under

Section 10 (1) of the said Act and Clause 10 of the Letters Patent and emphasised the historical distinction between the original jurisdiction exercised by the two groups of High Courts, i.e., the Chartered High Courts and the Non-Chartered High Courts.

37. Learned Amicus Curiae rightly pointed out, as referred to in the order of reference, that in view of Judgment in Shah Babulal Khimji case (supra) the earlier Judgments on maintainability of the appeal from non-appealable orders was held not to be good law [Jawahar Engineering Co. case (supra) and the Supreme Court in Jugal Kishore Paliwal case (supra) expressly over-ruled the Full Bench decision of the Delhi High Court in University of Delhi Vs. Hafiz Mohd. case (supra)]. However, in Abdul Hamid case (supra) an appeal against the order passed by the learned Single Judge on the original side was held maintainable under Clause 10 of the Letters patent which was the beginning of the divergence on this aspect and some subsequent Judgments inter-changeably used the expression of Clause 10 of the Letters Patent in Section 10 (1) of the said Act to conclude that the appeal would lie under one provision or the other losing significance of the distinction between the Letters patent of the Chartered High Courts like Bombay as compared to the Non-Chartered High Court of Lahore.

38. It is only in the recent Judgment in C.S. Aggarwal case (supra) while examining the maintainability of the LPA in respect of writ orders passed in quashing proceedings/criminal proceedings that a Full Bench of this Court through the then Acting Chief Justice (Arjan K. Sikri, J.) has emphasised the four kinds of appellate jurisdiction being exercised in the Delhi High Court as set out in para 25 above. The first category has been stated to be appeals under Section 10 (1) of the said Act limited to Judgments referable to Section 5 (2) thereof while the second one are appeals under the said Code. The third and fourth are the appeals under different statutes and Clause 10 of the Letters Patent respectively.

39. We, thus, conclude by laying down the following principle of law:

In case of an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under Section 104 read with Order 43 of the said Code which meets the test of a “Judgment” that decides

matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in Shah Babulal Khimji case (supra) by the Supreme Court, an appeal to the Division Bench would exclusively lie under Section 10 of the said Act and not under Clause 10 of the Letters Patent.

40. The reference is answered accordingly.

41. The matter be now placed before the Division Bench as per roster for directions on 16.1.2013.

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