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MOHD. SAUD & ANOTHER

v.

DR. (MAJ.) SHAIKH MAHFOOZ & OTHERS  
(Civil Appeal Nos.9321-9322 of 2010)

B

OCTOBER 25, 2010

**[MARKANDEY KATJU AND T.S. THAKUR, JJ.]**

*Code of Civil Procedure, 1908 – s.100-A – Amendment of, in 2002 – Effect – Interim order passed by Additional District Judge in a civil suit – First appeal against the interim order before Single Judge of the High Court – LPA against judgment of Single Judge – Maintainability of – Held: After the amendment of s.100-A in 2002, no litigant can have a substantive right for a further appeal against the judgment or order of the Single Judge of the High Court passed in an appeal – Only an LPA filed prior to coming into force of the amendment would be maintainable – In the instant case, the LPA was filed after 2002 and hence was not maintainable – No merit in the contention that s.100-A after its amendment in 2002 requires that the judgment of the Single Judge should be a judgment and decree of such Single Judge, and since in the present case the Single Judge decided an appeal against an interlocutory order of the Additional District Judge, the judgment of the Single Judge was not a decree and LPA against that judgment was not barred – This would be against the very purpose of object of s.100-A, that is to curtail the number of appeals – In any event, an appeal is a continuation of the original proceedings – Since the original order of the Additional District Judge was an interlocutory order, hence the judgment of the Single Judge was also interlocutory – Supreme Court does not ordinarily interfere under Article 136 of the Constitution with interlocutory orders – Interpretation of Statutes – Purposive construction – Constitution of India, 1950 – Article 136.*

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*Appeal – Right of – Held: An appeal is a creature of a statute and not an inherent right – This right of appeal can be taken away or curtailed by a subsequent enactment.*

**In a civil suit, the Additional District Judge, Fast Track Court passed an interim order, against which a first appeal under Order 43 Rule 1 CPC was filed before a Single Judge of the High Court. Against the judgment passed by the Single Judge, a Letters Patent Appeal (LPA) was filed. Since there was conflict of opinion between different Division Benches of the High Court on the point whether the LPA was maintainable, the Full Bench was constituted, and by the impugned judgment it was held that the LPA was not maintainable in view of Section 100-A CPC as amended in 2002.**

**Dismissing the appeals, the Court**

**HELD:1.1. An appeal is a creature of a statute and not an inherent right. This right of appeal can be taken away or curtailed by a subsequent enactment. After the amendment of Section 100-A in 2002, no litigant can have a substantive right for a further appeal against the judgment or order of the Single Judge of the High Court passed in an appeal. Only an LPA filed prior to coming into force of the Amendment Act would be maintainable. In the present case the LPAs were filed after 2002 and hence they are not maintainable. [Paras 10, 11, 12, 13 and 14] [91-D-H; 92-A-B]**

**1.2. There is no merit in the contention raised by the appellant that Section 100-A after its amendment in 2002 requires that the judgment of the Single Judge should be a judgment and decree of such Single Judge, and since in the present case the Single Judge decided an appeal against an interlocutory order of the Additional District Judge, the judgment of the Single Judge was not a**

A decree and L.P.A. against that judgment was not barred. It cannot be held that while two appeals will be maintainable against interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge. There seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court", in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which would include even an interlocutory order, the later part of the Section mentions judgment and decree. To resolve this conflict one has to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. The LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This would be strange, and against the very purpose of object of Section 100-A, that is, to curtail the number of appeals. The apparent contradiction in Section 100A as amended in 2002 was only due to bad drafting, and not much can be made out of it once the purpose of Section 100A is understood. [Paras18, 19, 20, 21 and 22] [92-H; 93-A-H]

1.3. In any event, an appeal is a continuation of the original proceedings. Since the original order of the Additional District Judge was an interlocutory order, hence the appeal against that order and the judgment of

the Single Judge in that sense was also interlocutory. It is well settled that this Court does not ordinarily interfere under Article 136 of the Constitution with interlocutory orders. [Paras 26 and 27] [94-D-F] A

*Garikapati Veeraya v. N. Subbiah Choudhry & Ors.* AIR 1957 SC 540; *Kamal Kumar Dutta & Ors. v. Ruby General Hospital & Ors.* 2006 (7) SCC 613; *Kamala Devi v. Khushal Kanwar & Anr.* AIR 2007 SC 663; *Directorate of Enforcement v. Deepak Mahajan & Anr.* (1994) 3 SCC 440; *Hindustan Lever Ltd. v. Ashok Vishnu Kate & Ors.* (1995) 6 JT 625 and *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation* (1985) 4 SCC 71, relied on. B C

*Gandla Pannala Bhulaxmi vs. Managing Director, APSRTC & Anr.* AIR 2003 AP 458; *Laxminarayan v. Shivilal Gujar & Ors.* AIR 2003 MP 49 and *Kesava Pillai Sreedharan Pillai v. State of Kerala & Ors.* AIR 2004 Ker 111 – approved. D

*Salem Advocate Bar Association, Tamil Nadu v. Union of India* AIR 2003 SC 189; *Birat Chandra Dagra v. Taurian Exim Pvt. Ltd. & Anr.* 2006(11) OLR 344 and *V.N.N. Panicker v. Narayan Patil & Anr.* 2006(2) OLR 349 – referred to. E

**Case Law Reference:**

2006(11) OLR 344	referred to	Para 9	F
2006(2) OLR 349	referred to	Para 9	
AIR 1957 SC 540	relied on	Para 10	
2006 (7) SCC 613	relied on	Para 10	G
AIR 2003 SC 189	referred to	Para 11	
AIR 2003 AP 458	approved	Para 12	
AIR 2003 MP 49	approved	Para 12	H

A	AIR 2004 Ker 111	approved	Para 12
	AIR 2007 SC 663	relied on	Para 13
	(1994) 3 SCC 440	relied on	Para 21
B	(1995) 6 JT 625	relied on	Para 21
	(1985) 4 SCC 71	relied on	Para 21

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9321-9322 of 2010.

C From the Judgment & Order dated 24.9.2008 in L.P.A. No. 7 of 2008 and order dated 25.10.2008 in L.P.A. No. 8 of 2008 of the High Court of Orissa at Cuttack.

WITH

D SLP(C) No. 13684-13685 of 2009

S.S. Dash, Ashok Panigrahi (for Satya Mitra Garg) for the Appellants.

E Dinesh Dwivedi, G. Ramakrishna Prasad, Bharat J. Joshi for the Respondents.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.**

F CIVIL APPEAL NOS. OF 2010

[arising out of Special Leave Petition (Civil) Nos.2515-2516 of 2009]

G 1. Leave granted.

2. These appeals have been filed against the impugned judgments of the Orissa High Court dated 24.9.2008 in LPA No.7 of 2008 and dated 25.10.2008 in LPA No.8 of 2008.

H

3. Heard learned counsel for the parties and perused the record. A

4. The facts have been mentioned in the impugned judgment of the High Court and hence we are not repeating the same here. B

5. The short question in the case is whether a Letters Patent Appeal (for short 'LPA') is maintainable before the Division Bench against the judgment of the learned Single Judge of the High Court. Dated 6.8.2008. Since there was conflict of opinion between different Division Benches of the High Court on the point whether the LPA was maintainable in view of the amendment of Section 100A CPC the Full Bench was constituted, and by the impugned judgment it was held that the LPA was not maintainable in view of Section 100-A CPC. C

6. It may be mentioned that the proceedings arose out of an interim order dated 9.9.2005 passed by the Additional District Judge, Fast Track Court No.III, Bhubaneswar in Civil Suit No.498 of 2004. The Civil Suit is still pending, but against the aforesaid interim order dated 9.9.2005 a first appeal under Order 43 Rule 1 being FAO No.386 of 2007 was filed before a learned Single Judge of the High Court who decided it on 6.8.2008. Against the judgment of this learned Single Judge dated 6.8.2008 the LPA was filed. It has been held to be not maintainable by the impugned judgment. D

7. Before deciding the question involved in this case we may refer to the relevant provisions in the C.P.C. E

8. Section 100-A of the Code of Civil Procedure (hereinafter called 'the Code') was inserted by Amendment Act 104 of 1976. The said Section initially read as follows: F

**Section 100-A : No further appeal in certain cases :**

Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the H

A force of law or in any other law for the time being in force,  
where any appeal from an appellate decree or order is  
heard and decided by a single Judge of a High Court, no  
further appeal shall lie from the judgment, decision or order  
of such single Judge in such appeal or from any decree  
B passed in such appeal.”

The said Section was amended by Amendment Act  
46 of 1999 as follows :

**Section 100-A** : *No further appeal in certain cases* :

C Notwithstanding anything contained in any Letters Patent  
for any High Court or in any other instrument having the  
force of law or in any other law for the time being in force,

D (a) Where any appeal from an original or appellate  
decree or order is heard and decided.

(b) Where any writ, direction or order is issued or  
made on an application under Article 226 or Article  
227 of the Constitution, by a single Judge of a High  
E Court, no further appeal shall lie from the judgment,  
decision or order of such single Judge.”

This amendment was however not given effect to.

F Again Section 100-A of the Code was amended by  
Act 22 of 2002 and the amended Section reads as  
follows:-

**Section 100-A** : *No further appeal in certain cases* :

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

9. The Full Bench by the impugned judgment has held that after the introduction of Section 100-A with effect from 1.7.2002, no Letters Patent Appeal shall lie against the judgment or order passed by a learned Single Judge in an appeal. The Full Bench has held that the decision of the Division Bench of the High Court in *Birat Chandra Dagra vs. Taurian Exim Pvt. Ltd. & Anr.* (vide page 5) 2006(11) OLR 344 does not lay down the good law while the decision of Division Bench in *V.N.N. Panicker vs. Narayan Patil & Anr.* 2006(2) OLR 349 lays down the correct law. The Full Bench has further held that after the amendment of Section 100-A w.e.f. 1.7.2002 no LPA shall lie against the order or judgment passed by a learned Single Judge even in an appeal arising out of a proceeding under a Special Act.

10. It has been held in a catena of decisions of this Court that an appeal is a creature of a statute and not an inherent right vide *Garikapati Veeraya vs. N. Subbiah Choudhry & Ors.* AIR 1957 SC 540. This right of appeal can be taken away or curtailed by a subsequent enactment vide in *Kamal Kumar Dutta & Ors. vs. Ruby General Hospital & Ors.* 2006 (7) SCC 613.

11. The validity of Section 100-A C.P.C. has been upheld by the decision of this Court in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India* AIR 2003 SC 189.

12. The Full Benches of the Andhra Pradesh High Court vide *Gandla Pannala Bhulaxmi vs. Managing Director, APSRTC & Anr.* AIR 2003 AP 458, the Madhya Pradesh High Court in *Laxminarayan vs. Shivrul Gujar & Ors.* AIR 2003 MP 49, and of Kerala High Court in *Kesava Pillai Sreedharan Pillai vs. State of Kerala & Ors.* AIR 2004 Ker 111 have held that after the amendment of Section 100-A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of the learned Single Judge of the High Court passed in an appeal. We respectfully agree with the aforesaid decisions.

A 13. In *Kamala Devi vs. Khushal Kanwar & Anr.* AIR 2007 SC 663, this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable.

B 14. In the present case the LPA was filed after 2002 and hence in our opinion they are not maintainable.

C 15. Learned counsel for the appellant, however, submitted that Section 100-A does not bar a LPA against a judgment of the learned Single Judge who had decided an appeal under Order 43 Rule 1 against an interlocutory order of the District Judge. He submitted that Section 100-A after its amendment in 2002 requires that the judgment of learned Single Judge should be a *judgment and decree* of such Single Judge. He further submitted that in the present case the learned Single Judge was hearing an appeal against an interlocutory order of the learned Additional District Judge and hence when the learned Single Judge decided the appeal he was not passing any decree because the suit was still pending.

E 16. Learned counsel submitted that there is a difference in the language of Section 100A as initially inserted in 1976, and the language of the provision as substituted in 2002. While the former barred an L.P.A. even against a judgment, decision or order of a learned single Judge which was not a decree, the latter bars only a judgment which is also a decree. Since the judgment of the learned Single Judge dated 6.8.2008 was not a decree he submitted that the L.P.A. against that judgment was not barred.

F 17. While at first glance this argument may appear plausible but when we go deeper into it, we will realize that it has no merit.

G 18. It would be strange to hold that while two appeals will be maintainable against interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

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19. It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court", in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the later part of the Section mentions judgment and decree.

20. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of object of Section 100-A, that is to curtail the number of appeals.

21. It is well settled that the modern method of interpretation is purposive vide *Directorate of Enforcement vs. Deepak Mahajan & Anr.* (1994) 3 SCC 440, *Hindustan Lever Ltd. vs. Ashok Vishnu Kate & Ors.* (1995) 6 JT 625 (vide page 631) and *Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation* (1985) 4 SCC 71.

22. We are of the opinion that the apparent contradiction in Section 100A as amended in 2002 was only due to bad drafting, and not much can be made out of it once we understand the purpose of Section 100A.

A 23. For the reasons given above we are of the opinion that the Full Bench of the High Court has taken a correct view. Thus there is no force in these appeals, which are accordingly dismissed. No costs.

B CIVIL APPEAL NOS 9323-9324 OF 2010  
[arising out of Special Leave Petition (Civil) Nos.13684-85 of 2009]

24. Leave granted.

C 25. These appeals have been filed against the order of the learned Single Judge dated 6.8.2008 in first appeal from order no.386 of 2007 of the Orissa High Court. The appeal before the learned Single Judge arose out of an interlocutory order passed by the learned Additional District Judge, Fast Track Court-III in a suit which is still pending.

D 26. In our opinion, though the judgment of the learned Single Judge is a final judgment, it is in another sense an interlocutory order as it is well settled that an appeal is a continuation of the original proceedings. Since the original order of the learned Additional District Judge was an interlocutory order, hence the appeal against that order and the judgment of learned Single Judge in that sense was also interlocutory.

E 27. It is well settled that this Court does not ordinarily interfere under Article 136 of the Constitution with interlocutory orders.

F 28. For the reasons given above, we dismiss these appeals without going into the merits of the case. However, we direct the learned Additional District Judge to decide the suit expeditiously. No costs.

G B.B.B.

Appeals dismissed.