

VINITA M. KHANOLKAR  
v.  
PRAGNA M. PAI AND ORS.

NOVEMBER 28, 1997

[S.B. MAJMUDAR AND K. VENKATASWAMI, JJ.]

*Specific Relief Act, 1963: Section 6(3)*

*Suit against dispossession—Order passed under section 6—Bar of appeal against.*

*Letters Patent of Bombay High Court.*

*Clause 15—Order passed by a Single Judge—Appeal before Division Bench—Permissibility of.*

*Proceedings under section 6 of Specific Relief Act—Order passed by a Single Judge of the High Court in exercise of its original jurisdiction—Appeal before Division Bench—Held maintainable—Held a statutory provision barring an appeal cannot cut across the constitutional power of High Court—Power flowing from the paramount charter under which High Court functions would not get excluded unless the statutory enactment expressly excludes appeals under letters patent—Held no such bar was discernible from Section 6 (3) of Specific Relief Act.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8422 of 1997.

From the Judgment and Order 11.7.97 of the Bombay High Court in A.No. 960 of 1994.

G.B. Sathe and D.N. Hungod for the Appellant.

D.N. Mishra for M/s. J.B.D. & Co., for the Respondents.

The following Judgment of the Court was delivered :

Leave granted. We have learned counsel for the parties.

The short question is whether an appeal would lie before a Division Bench of the High Court against an order of the learned Single Judge rendered

A by him in proceedings under sec. 6 of the Specific Relief Act, 1960 (hereinafter refer to as 'the Act'). Learned Single Judge passed an order dated 15.11.1994 in Suit No. 411/93 decreeing the suit in terms thereof. When an appeal was carried to the Division Bench of the High Court against the said order, it was contended on behalf of the respondents that the appeal was not maintainable in view of sub-sec (3) of sec. 6 of the Act. The said provision certainly bars any appeal or revision against any order passed by the court under sec. 6 of the Act. To that extent the decision of the Division Bench cannot be found fault with. However, one contention canvassed by learned counsel for the appellant requires closer scrutiny. He submitted that even if an appeal would not lie under sub-sec. (3) of sec. 6 of the Act by itself against any order passed by the court under sec. 6 of Act, this was an order passed by learned Single Judge of the High Court exercising original jurisdiction. Therefore, under clause 15 of the Letters Patent which is a charter under which the High Court of Bombay functioned, the said provision for appeal would not have been whittled down by the statutory provisions of sec. 6(3) of the Act. Clause 15 of the Letters Patent is extracted hereunder:-

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“15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.....And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras Bombay, Fort William in Bengal from the judgement (not being a judgement 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 a revisional jurisdiction, and not being a sentence or order passed or made in 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 the 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 Judgement 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, on or after the first day of February 1929 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 judgement 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 A  
in Our or Their privy Council, as hereinafter provided.”

Now it is well settled that any statutory provision barring an appeal or  
revision cannot cut across the constitutional power of High Court. Even the  
power flowing from the paramount charter under which the High Court  
functions would not get excluded unless the statutory enactment concerned B  
expressly excludes appeals under letters patent. No such bar is discernible  
from sec.6(3) of the Act. It could not be seriously contended by learned  
counsel for the respondents that if clause 15 of the Letters Patent is invoked  
then the order would be appealable. Consequently, in our view, on the clear  
language of clause 15 of the Letters Patent which is applicable to Bombay C  
High Court, the said appeal was maintainable as the order under appeal was  
passed by learned Single Judge of the High Court exercising original jurisdiction  
of the court. Only on that short ground the appeal is required to be allowed.  
The judgement and order of the High Court in appeal No. 960/94 are set aside  
and the appeal is restored to the file of the High Court for being proceeded  
further in accordance with law. As the appeal of 1994 is being restored to the D  
file of the High Court, the High Court is requested to decide the appeal as  
expeditiously as possible.

The appeal is accordingly allowed. No costs. We make it clear that we  
express no opinion on the merits of the controversy between the parties.

T.N.A

Appeal allowed.