

CHANDRA KANTA SINHA

A

ORIENTAL INSURANCE CO. LTD. AND ORS.

MAY 12, 2001

[SYED SHAH MOHAMMED QUADRI AND Y.K. SABHARWAL, JJ.] B

Letters Patent of Patna High Court—Clause 10—Maintainability—Appellant's truck caused a fatal accident—Trial Court ordered respondents to pay interim compensation of Rs. 50,000—Single Judge allowed appeal against that order—Letters Patent Appeal before the Division Bench challenging the order of the Single Judge was held to be not maintainable—On appeal this court—Held, appeal against order of one Judge not permissible (i) when judgment was passed in second appeal against judgment delivered in exercise of the appellate jurisdiction of a court subject to the superintendence of the High Court (ii) when judgment was made under exercise of revisional jurisdiction—Appeal was permissible when Single Judge while passing judgment in second appeal declares case fit for appeal, however, Section 100A CPC does not permit the same now—No L.P. appeal will lie provided the second appeal was against a decree or order of a District Judge or a Subordinate Judge or any other judge subject to superintendence of the High Court passed in first appeal—(iii) Letters Patent Appeal was maintainable as order of Single Judge was not passed in second appeal.

Words and Phrases—Meaning of "Appellate Jurisdiction" in the context of Letters Patent of Patna—Clause 10.

A claim case was filed against the appellant as his truck caused a fatal accident. Trial Court ordered respondents to pay an interim compensation of Rs. 50,000 against which an appeal was filed before the High Court and the same was allowed by the Single Judge. An L.P. appeal filed from the judgment of the Single Judge before a Division Bench. It was held that the Letters Patent Appeal filed by the appellant was not maintainable. Hence this appeal.

Appellant contended that under Clause 10 of the Letters Patent of Patna an appeal would lie against the erroneous decision of the Single Judge.

Respondents contended that as the judgment of the Single Judge was

- A passed under the appellate jurisdiction of the High Court, Letters Patent Appeal was not maintainable under Clause 10.

Allowing the appeal, the Court

- B HELD : 1. Under clause 10 of the Letters Patent of Patna, judgments of one Judge of the High Court are classified in two groups. In the first group fall judgments from which appeal will lie, excluding two categories of judgments of one Judge of the High Court i.e. (i) a judgment 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 said High Court which means a judgment passed in second appeal and (ii) from an order or judgment made in exercise of the revisional jurisdiction. The second group takes in judgments of one Judge passed in second appeal where the Judge who passed the judgment declares that the case is a fit one for appeal. However, Section 100A CPC now bars an appeal under the Letters Patent from the judgment of one Judge of a High Court passed in second appeal even with the leave of the Judge who passed the judgment. [762-F-H]

- E *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.*, [1953] SCR 1028; *New Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation and Ors.*, [1997] 3 SCC 462; *Municipal Corporation of Brihanmumbai and Anr. v. State Bank of India*, [1999] 11 SCC 123 and *Management of Central Mine Planning and Design Institute Ltd. v. Union of India and Anr.*, relied on.

- F 2. It is clear that the appellate jurisdiction mentioned in Clause 10 refers to a second appeal which is in respect of decree or order made in exercise of appellate jurisdiction in the first appeal by a court subject to the superintendence of the High Court. No Letters Patent Appeal will lie to the High Court provided the second appeal was against a decree or order of a District Judge or a subordinate judge or any other judge subject to the superintendence of the High Court passed in first appeal. [764-F-G]

- G *New Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation and Ors.*, [1997] 3 SCC 467, relied on.

- H 3. Letters Patent Appeal filed against order of the Single Judge is held to be maintainable as the same was not passed in second appeal, L.P.A. to be decided by the High Court on merits in accordance with law. [765-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3880 of 2001. A

From the Judgment and Order dated 2.7.98 of the Patna High Court in L.P.A. No. 599 of 1998.

S.B. Sanyal and Ranjan Mukherjee for the Appellant.

Ms. K. Sharda Devi, Vishnu Mehra and B.K. Satija for the Respondents. B

The Judgment of the Court was delivered by

SYED SHAH MOAMMED QUADRI, J. Leave is granted.

This appeal is directed against the judgment and order of the Division Bench of the High Court of Judicature at Patna in L.P.A. No. 599 of 1998 dated July 2, 1998 holding that the Letters Patent Appeal was not maintainable. C

The short question that arises for consideration in this appeal is : whether the Letters Patent Appeal No. 599 of 1988 filed against the order of a learned Single Judge of the Patna High Court passed in M.A. No. 494 of 1996 dated April 13, 1998, is maintainable. D

The following resume of the facts will be helpful in appreciating the question. E

The appellant is the owner of a truck which met with an accident, on February 1, 1996, resulting in the death of one Pradeep Kumar. The parents of the victim filed a Claim Case No. 31 of 1996 under Section 140 of the Motor Vehicles Act, 1988. On October 15, 1996, the learned Trial Judge, Madhubani, Bihar ordered that interim compensation of Rs. 50,000 be paid to the claimants by the Insurance Company within one month. Against that order, M.A. No. 494 of 1996 was filed by the Insurance Company, which was allowed by a learned Single Judge of the High Court on April 13, 1998. It was from that order that the Letters Patent Appeal arose, which was held to be not maintainable by the Division Bench of the High Court. F

Mr. S.B. Sanyal, the learned senior counsel appearing for the appellant, contended that under clause 10 of the Letters Patent of Patna an appeal against the order of learned Single Judge would lie to the High Court which was erroneously dismissed as not maintainable. He relied on a decision of this Court in *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.*, [1953] SCR 1028. G

H

A Mr. Vishnu Mehra, the learned counsel appearing for the respondents, relying on the judgment of this Court in *New Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation & Ors.*, [1977] 3 SCC 462 argued that the Letters Patent Appeal was not maintainable and the High Court had rightly rejected the same.

B It will be useful to refer to Clause 10 of the Letters Patent Patna, which, after omitting the words not necessary for the present discussion, would read thus :

C "That an appeal shall lie to the said 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 said high Court and not being an order made in the exercise of a revisional jurisdiction....) of one Judge of the said High Court.....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 to Section 108 of the Government of India Act (Article 225 of the Constitution of India) In the exercise of appellate jurisdiction 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 declared that the case is a fit one for appeal...."

F It can thus be seen that for purposes of appeal, under this clause, judgments of one Judge of the High Court of Patna are classified in two groups. In the first group fall judgments from which appeal will lie to the said High Court. From this group two categories of judgments of one Judge of the High Court are excluded (i) a judgment 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 said High Court, that is, where a judgment is passed by a Judge of the High Court in second appeal, no Letters Patent Appeal lies in the said High Court; and (i) from an order or judgment made in exercise of the revisional jurisdiction. The second group takes in judgments of one Judge passed in second appeal where the Judge who passed the judgment declares that the case is a fit one for appeal. But now Section 100A of the Code of Civil Procedure bars an appeal under the Letters Patent from the judgment of one Judge of a High Court passed in second appeal even with the Leave of the Judge who passed the judgment.

In *Municipal Corporation of Brihanmumbai & Anr. v. State Bank of A* India, [1999] 1 SCC 123, the question before a three-Judge Bench of this Court was whether the Letters Patent Appeal from the judgment and order of Single Judge of the Bombay High Court passed in an appeal under Section 218-D of the Bombay Municipal Corporation Act, 1888, was maintainable. It was held that the appeal under Section 218-D of the said Act was a second appeal against the appellate order made by the Additional Chief Judge, Small Causes Court. In view of Section 100A CPC, Letters Patent Appeal against the judgment of a Single Judge passed in the second appeal was not maintainable. B

In *National Sewing Thread* (supra), the case arose from the order of the Registrar of Trade Marks. The first appeal against the order of the Registrar was filed under Section 76(1) of the Trade Marks Act, 1940 before the High Court which was decided by a learned Single Judge. No procedure was prescribed as to the hearing of the appeal under that Act. The question that arose for consideration was : whether the judgment of the learned Single Judge was appealable to the Division Bench under clause 15 of the Letters Patent, Bombay. It was held that the High Court had to exercise its appellate jurisdiction under Section 76 of the said Act in the same manner as it exercised its other appellate jurisdiction and when such jurisdiction was exercised by a Single Judge, his judgment was appealable under clause 15 of the Letters Patent. C D

Clause 10 of the Letters Patent of Patna High Court has been the subject-matter of consideration of two-Judge Bench of this Court (of which I was a member) in a recent case—*Employer in Relation to Management of Central Mine Planning and Design Institute Ltd. v. Union of India & Anr.*, JT [2001] 2 SC 87. After noticing that clause 15 of the Letters Patent of Calcutta, Bombay and Madras is in *is dem terminis* clause 10 of the Letters Patent of Allahabad, Patna, Punjab & Haryana and Madhya Pradesh; the Court laid down as follows: E F

“The above analysis of Clause 15 of the Letters Patent will equally apply to Clause 10 of the Letters Patent of Patna. It follows that an appeal shall lie to a larger Branch of the High Court of Judicature at Patna from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution of India. The following categories of judgment are excluded from the appealable judgments under the first limb of clause 10 of the Letters Patent. G H

- A (i) A judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to superintendence of the said High Court; in other words, no letters patent appeal lies to the High Court from a judgment of one Judge of the High Court passed in second appeal;
- B (ii) an order made by one Judge of the High Court in exercise of revisional jurisdiction; and
- (iii) a sentence or order passed or made in exercise of power under the provisions of Section 107 of Government of India Act, 1915 (now Article 227 of the Constitution of India) or in exercise of criminal jurisdiction."
- C

Learned counsel for the respondents, however, argued that clause 10 provides that an appeal shall lie to the said High Court only from "a judgment passed in exercise of the appellate jurisdiction not being a judgment passed

- D in the exercise of the appellate jurisdiction" and as the judgment of the learned Single Judge was passed in the appellate jurisdiction, a Letters Patent Appeal was not maintainable. In our view, the contention of the learned counsel is based on a mis-reading of clause 10. He has overlooked the vital words, namely, "*in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court*" in the first limb of clause 10. If those words are also read along with the words relied upon by the learned counsel, it becomes clear that the appellate jurisdiction mentioned therein refers to a second appeal under Section 100 CPC (or under any provision of an special Act) which is in respect of decree or order made in exercise of appellate jurisdiction in the first appeal,
- E filed under Section 96 CPC, (or under any provision of an special Act) by a court subject to the superintendence of the High Court. In other words. From a judgment passed by one judge in second appeal, under Section 100 CPC or any other provision of an special Act no Letters Patent Appeal will lie to the High Court provided the second appeal was against a decree or order of a District Judge or a subordinate judge or any other judge subject to the superintendence of the High Court passed in a first appeal under Section 96 CPC or any other provision of an special Act.

In *New Kenilworth Hotel (P) Ltd.* case (supra), aggrieved by the order the Trial Court passed under Order 39, Rules (1) and (2), an appeal under

- H Section 104(1) CPC read with Order 43, Rule 1(r) was filed before the High

Court which was disposed of by one Judge of the High Court. From the order/ A judgment of one Judge, a letters patent appeal (second appeal) was filed before the Division Bench under clause 10 of the Letters Patent of Orissa High Court. The Division Bench of the High Court held that the Letters Patent Appeal was not maintainable. Having regard to the provision of Section 104(2), the appeal before the Division Bench was barred. On appeal to this Court it was held: B

“As held earlier, the right of appeal is a creature of the statute and the statute having expressly prohibited the filing of second appeal under sub-section (2) of Section 104, the right of appeal provided under clause 10 of the Letters Patent would not be available”. C

Therefore, reliance on the judgment of this Court in *New Kenilworth Hotel (P) Ltd.* case (supra) will be of no avail to the respondents.

From the above discussion, it follows that the appeal against the order of the learned Single Judge in M.A. No. 494 of 1996 dated April 13, 1998 would lie before the Division Bench under clause 10 of the Letters Patent. Letters Patent Appeal No. 599 of 1998 is, therefore, maintainable. The order of the High Court under challenge is set aside. The Letters Patent Appeal is restored to the file of the High Court. The High Court will now decide the said letters patent appeal on merits in accordance with law. The appeal is accordingly allowed. There shall be no order as to costs. D E

A.Q.

Appeal allowed.