South Asia Industries Private Ltd.

Vs

S. B. Sarup Singh and Others

Civil Appeal No. 726 of 1964

(CJI K. Subha Rao, Raghuvar Dayal, R. S. Bachawat, V. Ramaswami – I JJ)

18.01.1965

JUDGMENT

SUBBA RAO, J. -

This appeal by certificate raises the question whether an appeal lies under cl. 10 of the Letters Patent for the High Court of Lahore, to a Division Bench of the Punjab High Court against a judgment passed by a single Judge of the said High Court in a second appeal under section 39 of the Delhi Rent Control Act, 1958 (Act No. 59 of 1958), hereinafter called the Act.

The facts relevant to the question raised may be briefly stated. The respondents are the owners of plot No. 5, Connaught Circus, New Delhi. Messrs. Allen Berry & Co. Private Ltd. took a lease of the same under a lease deed dated March 1, 1956. Messrs. Allen Berry & Co. assigned their interest under the said lease deed to South Asia Industries (Private) Ltd., the appellant herein. Thereafter, the respondents filed an application before the Controller, Delhi, under section 14 of the Act for the eviction of the appellant from the said premises on the ground that Messrs. Allen Berry & Co. unauthorizedly assigned the said premises in favour of the appellant. The Controller, by his order dated October 10, 1962, allowed the petition. On January 23, 1963, the appeal filed by the appellant against the said order was dismissed by the Rent Control Tribunal, Delhi. Against the said order of the Tribunal the appellant filed an appeal in the High Court of Punjab under section 39 of the Act. The said second appeal was dismissed on May 10, 1963, by Harbans Singh, J. The appellant filed an appeal against the judgment of the learned single Judge to a Division Bench of the said High Court under cl. 10 of the Letters Patent. That appeal came up for disposal before a Division Bench of the High Court, which dismissed the same on the ground that it was not maintainable. Hence the present appeal.

Mr. A. Viswanatha Sastri, learned counsel for the appellant raised before us the following points : (1) Section 39 of the Act confers a right of appeal from an order of the Rent Control Tribunal to the High Court and, therefore, when once that appeal reaches the High Court, it has to exercise the jurisdiction in the same manner as it exercise other appellate jurisdiction, that is to say the judgment of a single Judge in that appeal becomes subject to an appeal to the High Court under cl. 10 of the Letters Patent. (2) Section 43 of the Act is only a bar to initiate collateral proceedings for the purpose of questioning the order of the Tribunal and it does not make the judgment of a single Judge in an appeal under section 39 of the Act final; and, that apart, a letters patent appeal is not a separate appeal to the High Court but is only, in effect, the continuation of the same appeal in the High Court.

The arguments of M/s. Gopal Singh and Gurcharan Singh Bakshi, learned counsel for the

respondents, may be summarized thus : The Act confers a special jurisdiction on the High Court to entertain an appeal; and the judgment in such an appeal does not attract cl. 10 of the Letters Patent. That apart, the first part of cl. 10 of the Letters Patent on which the appellant relies only provides for an appeal against the judgment of a single Judge made in the exercise of the High Court's original jurisdiction; and even if is wide enough to comprehend a judgment made in appellate jurisdiction, it should be an appeal against the order of a Court. In the instant case the Tribunal functioning under the Act is not a Court and, therefore, the judgment passed by a single Judge of the High Court against the judgment of such a Tribunal is not subject to Letters Patent appeal under the said clause. In any view, section 43 of the Act makes the judgment of a single Judge made in an appeal final and, therefore, to that extent, cl. 10 of the Letters Patent has been modified by the appropriate Legislature.

Let us at the outset consider the relevant provisions uninfluenced by judicial decisions. At this stage it will be convenient to read the material provisions of the Letters Patent governing the Punjab High Court.

Clause 11. And we do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

Clause 10, before its amendment by Letters Patent of 1928, read of follows :

> "And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore, from the judgment (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, 1915, 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 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court, at the time being; but that 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."

After the amendment in 1928, cl. 10 reads :

> "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 180 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 to section 108 of the Government of India Act, made 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 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 judgment 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."

The first part of cl. 11 of the Letters Patent says that the High Court shall be a Court of appeal from civil courts of the Provinces of Punjab and Delhi and from all other Courts subject to the superintendence of the High Court; the second part thereof empowers the High Court to exercise appellate jurisdiction in such cases as were immediately before the date of the publication of the Letters Patent subject to appeal to the Chief Court of Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India. The second part does not make a distinction between appellate jurisdiction over Courts and that over Tribunals which are not Courts. If a law made by a competent legislative authority declares a case to be subject to appeal to the High Court of Judicature, the said High Court acquires jurisdiction to entertain the same and dispose of it in accordance with law. If the High Court entertains an appeal in terms of cl. 11 of the Letters Patent, cl. 10 thereof is attracted to such an appeal. Under section 108 of the Government of India Act, 1915, the High Court may by its own rules provide, as it thinks fit, for the exercise by one or more Judges or by a Division Court constituted by two or more Judges of the High Court, of original and appellate jurisdictions vested in the Court; and under cl. (2) thereof the Chief Justice of each High Court shall determine that Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Divisions Courts. If in exercise of the jurisdiction under section 108 of the Government of India Act, 1915, an appeal filed in a High Court is posted before a single Judge of that Court and a judgment is delivered therein by that Judge, one has to look to cl. 10 of the Letters Parent whether a further appeal lies to the High Court against the said judgment. Before the amendment of cl. 10 of the Letters Patent in 1928, from the Judgment of a single Judge of the said High Court or one Judge of any Division Court an appeal lay to the said High Court; but there were certain exceptions to that rule. If the judgment was made by a single Judge in exercise powers of superintendence under section 107 of the Government of India Act, 1915, or in exercise of criminal jurisdiction, no further appeal lay from his judgment. There were no further exceptions such as that the said judgment should have been in an appeal against an order of a Court. A plain reading of the said clause indicates that except in the 3 cases excluded an appeal lay against the judgment of a single Judge of the High Court to the High Court in exercise of any other jurisdiction. As the clause then stood, it would appear that an appeal lay against the judgment of a single Judge of the High Court made in exercise of second appellate jurisdiction without any limitation thereon. The effect of the amendment made in 1928, so far as is relevant to the present enquiry, is the exclusion of the right of appeal from a judgment passed by a single Judge sitting in second appeal unless the Judge who passed the Judgment grants a certificate that the case is a fit one for appeal. The amended clause, presumably for the purpose of artistic drafting, practically leaves

the first part as it was and in the second part introduces a limitation in the matter of a further appeal against the judgment of such a single Judge. Looking at the part of the amended clause excluding the exceptions, it is obvious that its wording is general. Thereunder an appeal lies from the judgment of one Judge of the said High Court, whether the said judgment is made in exercise of appellate, revisional or criminal jurisdiction or where the judgment is made in a first appeal or second appeal against the order of a Court or a Tribunal. Four exceptions are carved out out from the general rule. Apart from the three exceptions to the general rule already noticed in the context of unamended clause the amended clause introduces another exceptions noticed supra. The result is that under the first part of cl. 10 of the Letters Patent an appeal lies from the judgment of a single Judge of the High Court by him in exercise of his original jurisdiction or in exercise of first appellate jurisdiction, whether the appeal is against the order of a Court or not; and in the case of second appellate jurisdiction, if the appeal is against the order of a Tribunal, which is not a Court. But in the case of a judgment made in a second appeal against the decree or order of a Court subordinate to the High Court, no further appeal lies unless the said Judge declares that the case is a fit one for appeal. It is not permissible, by construction, to restrict the scope of the generality of the provisions of cl. 10 of the Letters Patent. The argument that a combined reading of cls. 10 and 11 of the Letters Patent leads to the conclusion that even the first part of cl. 10 deals only with appeals from Courts subordinate to the High Court has no force. As we have pointed out earlier, cl. 11 contemplates conferment of appellate jurisdiction on the High Court by an appropriate Legislature against orders of a Tribunal. Far from detracting from the generality of the words "judgment by one Judge of the said High Court", cl. 11 indicates that the said judgment takes in one passed by a single Judge in an appeal against the order of a Tribunal. It is said, with some force, that if this construction be accepted, there will be an anomaly, namely, that in a case where a single Judge of the High Court passed a judgment in exercise of his appellate jurisdiction in respect of a decree made by a Court subordinate to the High Court, subordinate to the High Court, a further appeal to that Court will not lie unless the said Judge declares that the case is a fit one for appeal, whereas, if in exercise of his second appellate jurisdiction, he passed a judgment in an appeal against the order of a Tribunal, no such declaration is necessary for taking the matter on further appeal to the said High Court. If the express intention of the Legislature is clear, it is not permissible to speculate on the possible reasons that actuated the Legislature to make a distinction between the two classes of a cases. It may be, for ought we know, the Legislature thought fit to impose a limitation in a case where 3 Courts gave a decision, whereas it did not think fit think to impose a limitation in a case where only one Court gave decision.

This Court in National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. ([1953] S.C.R. 1028, 1044.), construed cl. 15 of the Letters Patent for the Bombay High Court, corresponding to cl. 10 of the Letters Patent for the Lahore High Court. There the question was whether a Letters Patent appeal lay from a judgment of a single Judge of the Bombay High Court to a Division Bench of that High Court against the decision of the Registrar of Trade Marks under the Trade Marks Act, 1940. Section 76(1) of the said Act provided that "an appeal shall lie from any decision of the Registrar under this Act or the rules made thereunder to the High Court having jurisdiction" and the Act did not make any provision in regard to the procedure to be followed by the High Court in the appeal, or as to whether the order passed in the appeal was appealable. Two points were raised before this Court, namely, (1) the provisions of the first part of cl. 15 of the Letters Patent for the Bombay High Court could not be attracted to an appeal preferred to the High Court under section 76 of the Trade Marks Act, 1940; and (2) the said clause would have no application in a case where the judgment could not be said to have been delivered pursuant to section 108 of the Government of India Act, 1915. On the first question, this Court held that the High Court being seized as such of the appellate

jurisdiction conferred by section 76 of the Trade Marks Act, 1940, it had to exercise that jurisdiction in the same manner as it exercise its other appellate jurisdiction and when such jurisdiction was exercised by a single Judge, his judgment became subject to appeal under cl. 15 of the Letters Patent of the Bombay High Court there being nothing to the contrary in the Trade Marks Act. On the second question, this Court held thus :

> "We are therefore of the opinion that section 108 of the Government of India Act, 1915, conferred power on the High Court which that Court could exercise from the High to time with reference to its jurisdiction whether existing at the coming into force of the Government of India Act, 1915, or whether conferred on it by any subsequent legislation."

The difference between that case and the present one is that the single Judge in that case passed a judgment in a first appeal against the order of the Registrar, while in the present case of single Judge passed an order in a second appeal. But that will not make any difference in the construction of the part of cl. 10 of the Letters Patent for the High Court of Lahore, corresponding to cl. 15 of the Letters Patent for the High Court of Bombay. Another difference is that while under the last part of cl. 11 of the Letters Patent for the Lahore High Court there are the words "or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India", the said words are absent in the corresponding cl. 16 of the Letters Patent for the Bombay High Court. Notwithstanding the said omission this Court in the said case held that the appeal under the Trade Marks Act was an addition of a new subject-matter of appeal to the appellate jurisdiction already exercised by the High Court and that the rules made under section 108 of the Government of India Act, 1915, applied to the same. It is contended that in that case it was not argued that the Registrar was not a Court, and therefore the Supreme Court assumed that the Registrar was a Court and on that assumption held that the first part of cl. 15 of the Letters Patent of the Bombay High Court was attracted. We do not see any justification for this argument. One of the contentions raised before the Court was that the Trade Marks Act created a new Tribunal and conferred a new appellate jurisdiction on the High Court. This Court rejected that contention with the following words :

> "The statute creates the Registrar a tribunal for safeguarding these rights and for giving effect to the rights created by the Act and the High Court as such without more has been given appellate jurisdiction over the decisions of this tribunal."

The entire judgment proceeded on the basis that the Registrar was only a tribunal. It is not possible to visualize that both the Advocates as well as the Judges of this Court missed the point that the tribunal was not a Court and, therefore, applied the first part of cl. 15 of the Letters Patent of the Bombay High Court. Indeed, the question of applicability of section 108 of the Government of India Act, 1915, to the appeal in that case would not have arisen if it was an appeal against the order of civil Court. We, therefore, cannot countenance the argument that this Court assumed that the Registrar was a Court in applying cl. 15 of the Letters Patent of the Bombay High Court in the appeal in question in that case. This decision therefore covers the question now raised before us.

The relevant rule applicable to the present case has been stated by this Court in the aforesaid decision thus;

> "Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in according with

> the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then the appeal must be regulated by the practice and procedure of that Court."

This principle was laid down by the Judicial Committee in a number of decisions : see National Telephone Co., Ltd. v. Postmaster-General ([1913] A.C. 546.); R.M.A.R.A. Adaikappa Chettiar v. Ra. Chandrasekhara Thevar ([1947] 74 I.A. 264.); Secretary of State for India v. Chellikani Rama Rao (1916) I.L.R. 39 Mad. 617.); Maung Ba Thaw v. Ma Pin ((1934) L.R. 61 I.A. 158.); and Hem Singh v. Basant Das (A.I.R. 1936 P.C. 93.)

The following legal position emerges from the said discussion : A statute may give a right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it under section 108 of the Government of India Act, 1915, an appeal under section 39 of the Act will be heard by a single Judge. Any judgment made by the single Judge in the said appeal will, under cl. 10 of the Letters Patent, be subject to appeal to that Court. If the order made by a single Judge is a judgment and if the appropriate Legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a single Judge under cl. 10 of the Letters Patent to the High Court. It follows that, if the Act had not taken away the Letters Patent appeal, an appeal shall certainly lie from the judgment of the single Judge to the High Court.

In the view we have expressed it is not necessary to consider the question whether the tribunal is a court or not, for, as we have pointed out earlier, it is not germane to the question of maintainability of the Letters Patent appeal.

The next question is whether the right of appeal conferred by cl. 10 of the Letters Patent, Lahore, has been taken away by a law made by the appropriate Legislature. It is conceded that the appropriate Legislature can take away that right : see cl. 37 of the Letters Patent, Lahore. It is argued by the learned counsel for the respondents that section 43 of the Act has that effect. The relevant provisions of the Act may now be noticed.

Section 39. (1) Subject to the provisions of subsection (2), an appeal shall lie to the High Court from an order made by the Tribunal within sixty days from the date of such order.

(2) No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law.

Section 43. Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

A combined reading of the said two sections may stated thus : Subject to the right of appeal to the High Court on a substantial question of law, the order passed by the High Court on appeal is final and it shall not be called in question in any original suit, application or execution proceeding. Mr. Viswanatha Sastri contends that the last sentence in section 43 of the Act gives colour to the

expression "final". According to him, finality is only with reference to collateral proceedings, such as, suits, applications and execution proceeding.

The expression "final" prima facie connotes that an order passed on appeal under the Act is conclusive and no further appeal lies against it. The last sentence in section 43 of the Act, in our view, does not not restrict the scope of the said expression; indeed, the said sentence imposes a further bar. The expression "final" in the first part of section 43 of the Act puts an end to a further appeal and the words "shall not be called in question in any original suit, application or execution proceeding" bar collateral proceedings. The section imposes a total bar. The correctness of the judgment in appeal cannot be questioned by way of appeal or by way of collateral proceedings. It is true that the expression "final" may have a restrictive meaning in other contexts, but in section 43 of the Act such a restrictive meaning cannot be given, for Ch. VI of the Act provides for a hierarchy of tribunals for deciding disputes arising thereunder. The Act is a self-contained one and the intention of the Legislature was to provide an exhaustive code for disposing of the appeals arising under the Act. The opening words of section 43 of the Act "save as otherwise expressly provided in this Act" emphasize the fact that the finality of the order cannot be questioned by resorting to something outside the Act. Some of the decisions cited at the Bar defining the expression "final" may usefully be referred to. In Maung Ba Thaw v. Ma Pin ((1934) L.R. 61 I.A. 158.) the Judicial Committee had to the consider whether an appeal lay to the Privy Council against the order of the High Court under section 75(2) of the Provincial Insolvency Act, 1920. The said Act provided by section 4(2) that subject to the provisions of the Act and notwithstanding anything contained in any other law for the time being in force, the decision of the District Court under the Act was final; but under section 75(2), however, there was a right of appeal to the High Court from the decision of the District Court. The Judicial Committee held that in a case where the Act gave a right to appeal to the High Court, an appeal from the decision of the High Court lay to the Privy Council under, and subject to, the Code of Civil Procedure. It reiterated the principle that where a Court is appealed to as one of the ordinary Courts of the country, the ordinary rules of the Code of Civil Procedure applied. It will be noticed at once that the order of the District Court was final subject to the provisions of the said Act and under the said Act a right of appeal was given to the High Court. The order of the High Court in the appeal was not made final. Therefore, the Judicial Committee held that an appeal lay to the Privy Council against the order of the High Court. This decision, therefore, does not really help the appellant. In Kydd v. Liverpool Watch Committee ((1934) L.R. 61 I.A. 158.) the facts were as follows : Under section 11 of the Police Act, 1890 (53 & 54 Vict. c. 45), there was an appeal to quarter sessions as to the amount of a constable's pension. The duty of the quarter session was stated thus : "that Court, after inquiry into the case, may make such order in the matter as appears to the Court just, which order shall be final."

Lord Loreburn, L.C. construed the said section thus :

> "Where it says, speaking of such an order, that it is to be final, I think it means there is to be an end of the business at quarter sessions.....".

The Judicial Committee again in Secretary of State v. Hindustan Co-operative Insurance Society Ltd. ((1934) L.R. 61 I.A. 158.) construed the expression "final" and held that the expression was intended to exclude any further appeal. There, under section 71 of the Calcutta Improvement Act, 1911, a limited right of appeal to the High Court was given from an award of the Tribunal and it provided that, subject to that right only, the award should be final. Their Lordships held that the provision for finality was intended to exclude any further appeal. No further citation is called for. As we have stated, the expression "final" in section 43 of the Act indicates that no further appeal is

contemplated against the order passed on appeal against the order of the Tribunal.

To escape from this construction a larger scope is sought to be given to the expression "appeal to the High Court". It is said that the expression "appeal" in sections 43 and 39 of the Act means an appeal to the High Court and not to a single Judge and that the said appeal is finally disposed of only by the final judgment of the High Court. It is said that whatever may be the internal arrangement in disposing of that appeal, there is only one appeal till it is finally disposed of. This argument is plausible, but it has not found favour with this Court. This Court in Union of India v. Mohindra Supply Company ([1962] 3 S.C.R. 497.) considered the question whether section 39(2) of the India Arbitration Act, 1940, has taken away the right of appeal under the Letters Patent. Section 39(2) of the said Act reads as follows :

> "No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

It was argued, as it is argued before us, that the second appeal under the section referred to an appeal to a superior Court and not to appeals "intra-Court" and, therefore, section 39(2) of the Arbitration Act did not operated to prohibit an appeal under the Letters Patent against the order of a single Judge. This Court held that the expression "second appeal" included an appeal under the Letters Patent. This decision rules that a Letters Patent appeal is not a part of the appeal filed in the High Court against the award of the Arbitrator, but is a fresh appeal against the order of the single Judge. This Court in Ladli Prasad Jaiswal v. Karnal Distillery Co., Ltd. ([1964] 1 S.C.R. 270.) held that the expression "Court immediately below" in Art. 133(1)(a) of the Constitution took in a single Judge of the High Court. There, the judgment of the District Judge was reversed by the single Judge of High Court. Against the order of the single Judge of the High Court in appeal from that of the Subordinate Judge a letters Patent appeal was preferred to a Division Bench of the High Court and the said Division Bench affirmed the judgment of the single Judge. The question arose whether the single Judge was a Court immediately below the Division Bench. For the respondent it was contended that the judgment of the High Court against which the appeal was preferred the affirmed the decision of the Court immediately below and that the appeal did not involve any substantial question of law and, therefore, the High Court was not competent to grant a certificate under Art. 133(1)(a) of the Constitution. For the appellant it was urged that the appeal against the judgment of the single Judge to a Division Bench under cl. 10 of the Letters Patent was a "domestic appeal" within the High Court and in deciding whether the decree of a Division Bench in an appeal under the Letters Patent from decision of a single judge exercising appellate jurisdiction affirmed the decision of the Court immediately below, regard must be had to the decree of the Court subordinate to the High Court, against the decision of which appeal was preferred to the High Court. This Court came to the conclusion that the expression "Court immediately below" in Art. 133(1)(a) must mean a Court from the decision of which the appeal has been filed in the High Court, whether such a Judge was a single Judge of the High Court or a Court subject to the Superintendence of the High Court. It will be seen that if a Letters Patent appeal was only a continuation of the appeal filed from the decree of the District Judge by a domestic arrangement, this Court would have held that the judgment in the Letters Patent appeal was not a judgment of affirmation but one of reversal of the judgment of the District Court. This decision, therefore, recognizes that an appeal disposed of by a single Judge of the High Court and the appeal from the judgment of the single Judge to a Division Bench thereof are different appeals. Apart from these to a decisions, on principle we do not see any justification to hold that an appeal under section 39(1) of the Act and an appeal under cl. 10 of the Letters Patent from part of a single appeal. They are in law and in fact different appeals - one given

by the statute and the other by the Letters Patent. We cannot, therefore, accede to the argument advanced by the learned counsel for the appellant that the expression "appeal" in section 39 of the Act takes in a Letters Patent appeal under cl. 10 of the Letters Patent.

Learned counsel for the respondents further contended that section 39 of the Act conferred a special jurisdiction on the High Court as persona designate and therefore, the decision of the single Judge in appeal is not a "judgment" within the meaning of cl. 10 of the Letters Patent. In support of this view reliance was placed, inter alia, on Radha Pathak v. Upendra Patowary (A.I.R. 1962 Assam 71.) and Hanskumar Kishanchand v. The Union of India. ([1959] S.C.R. 1177.) But, in the view we have expressed on the construction of section 39, read with section 43, of the Act, it is not necessary to deal with that question in this appeal. We shall not be understood to have expressed our opinion on this question one way or other.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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