

RAJASTHAN HIGH COURT

New India Assurance Co. Ltd.

Vs.

Pushpa Devi

C.S.A. Nos. 53 and 485 of 2002
(B. Prasad and N.P. GUPTA, JJ.)

03.10.2002

JUDGEMENT

B. Prasad, J.

1. These two appeals are filed under Section 18 of the Rajasthan High Court Ordinance, 1949 (hereinafter referred to as 'the Ordinance'). With the repeal of Rajasthan High Court Ordinance, Section 18 also stands repealed. A Division Bench of this Court in the case of *State of Rajasthan v. Vasna Ram, reported in ¹* has taken note of this fact thus:-

"This appeal has been preferred under the provisions of Section 18 of the Rajasthan High Court Ordinance, 1949 (hereinafter referred to as 'the Ordinance'). That Ordinance provided inter-Court appeal against the judgment and order of the single Judge passed in writ petitions and also against the judgments in first appeal by the single Judge. The said Ordinance stood repealed by the Judicial Administration Laws (Repeal) Act, 2001 (Act No. 22 of 2001) which received the assent of Hon'ble the President of India on 29-8-2001 and has been published in the Gazette of India, Extraordinary, Part II, dated 29-8-2001."

2. The effect of this repeal has been discussed in detail by the Division Bench of this Court in this judgment. After a detailed discussion and consideration of various decisions of the Apex Court, the Division Bench came to the conclusion thus:-

"Thus, in view of the above, it can be summarized that appeal is a creation of the statute, and conferring a particular jurisdiction upon the Court falls exclusively within the domain of the Legislature. Therefore, in absence of any

provision in the Act/Rules/Ordinance/Notification, providing for an appeal, the appeal cannot be held to be maintainable. If the Legislature, in its wisdom, has withdrawn the provision providing for an appeal, the Court lacks competence to create the forum.

The Ordinance, Section 18 of which provided for an appeal, stands repealed and the repealing Act does not contain any saving clause, and Sri Jangid could not point out any provision analogous to Section 18 of the Ordinance, existing in any Statute in force. In such a fact-situation, the appeal cannot be entertained."

3. Thus, the purport of the judgment quoted hereinabove shows that power to maintain an appeal under Section 18 of the Ordinance stands excluded.

4. Another appeal in the matters of an order passed by the Single Judge in constitutional matter has been considered by another Division Bench of this Court in the case of *Punjab National Bank v. Purewell and Associates Ltd.* reported in ² wherein it has been held that any appeal to a Division Bench from a Single Judge Bench in constitutional matters is maintainable before the Division Bench of this Court under Section 18 of the Ordinance. The relevant portion of this judgment is quoted thus:-

"23. It is settled law that right to file appeal is conferred under the Statute, therefore, we have to see whether under Order 18 of the Ordinance of 1949 intra-Court appeal against the judgment/order passed by the Single Judge in a petition exercising the powers under Article 227 of the Constitution of India is expressly barred? Ordinance 18 of the Ordinance 1949 reads as under :

"18. Appeal to the High Court from Judges of the Court.- (1) An appeal should be to the 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 superintendent of the 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 Section 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything herein before provided, an appeal shall lie to the

High Court from a judgment of one Judge of the High Court 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 High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

Ordinance 18 says that the appeal shall lie from the judgment of one Judge of the High Court except when (i) the judgment delivered by the Single Judge is in exercise of the appellate jurisdiction, against is subject to superintendence of the High Court, in exercise of its appellate jurisdiction, unless the Judge concerned declares that the case is fit one for appeal, (ii) the order is made in exercise of the revisional jurisdiction, (iii) a sentence or order passed or made in exercise of the power of superintendence under Ordinance 43 of the Ordinance of 1949 or in exercise of criminal jurisdiction.

24. The question for consideration before this Court is whether the appeal lies under Ordinance 18 of the Ordinance of 1949 against the order passed by the Single Judge in exercise of the powers under Article 227 of the Constitution of India and, therefore, we have to see whether Article 227 of the Constitution of India is akin to Ordinance 43 of the Ordinance of 1949 and can we read Article 227 of the Constitution of India in place of Ordinance 43 of the Ordinance of 1949 (?) as has been done by the Apex Court wherein Article 227 was read in place of Section 107 of the Government of India Act, 1915. Ordinance 43 of the Ordinance of 1949 reads as under:-

"43. Power to call for returns, etc.- The High Court shall have superintendence over all Courts, civil or criminal in the State for the time being subject to its appellate jurisdiction, and may, among other things do any of the following things, that is to say-

- (a) provide for their inspection and supervision of their work;
- (b) call for returns;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts'
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts and returns submitted by them;
- (e) settle tables of fees to be allowed to Amins (Kariks or Nazirs) and all clerks

and officers of Courts;

(f) regulate all such matters as it may think fit with a view to the promoting of their efficiency and maintaining of proper discipline:

Provided that such rules, forms, and tables shall not be inconsistent with the provisions of any law for the time being in force and shall have been approved by the Rajpramukh."

A bare reading of Ordinance 43 of the Ordinance, 1949 indicates that the High Court can exercise the power of superintendence over all Courts, civil or criminal, which are subject to its appellate jurisdiction. Sub-clauses (a) to (f) provides for inspection and supervision of the work of the subordinate Court, call for returns, make and issue general rules and prescribe forms for regulating the practice and proceedings of the Courts below, prescribe forms in which the books, entries and accounts shall be kept by the officers of any such Courts and returns submitted by them, to settle tables of fees to be allowed to Amins (Kariks or Nazirs) and all clerks and officers of Court, and regulate all such matters as it may think fit with a view to the promoting of their efficiency and the maintaining of proper discipline. Provided such Rules, form and tables shall not be inconsistent with the provisions of any law for the time being in force and shall have been approved by the Rajpramukh. The entire tenor of Ordinance 43 of the Ordinance of 1949 with its heading "Power to call for returns etc." indicates that the power of superintence which is meant to be exercised by the High Court under Ordinance 43 appears to be on its administrative side and not the power of superintendence as contemplated under Article 227 of the Constitution of India.

5. The Division Bench in the concluding para has further held thus :-

"For the reasons stated hereinabove, in all eventualities, appeal against the order dated 20-8-1999 of the Single Judge is maintainable under Ordinance 18 of the Ordinance of 1949."

6. Thus, it is seen that appeal against the order of Single Judge of this Court can only be maintained under Section 18 of the Ordinance according to the views expressed by two Division Benches of this Court, as quoted hereinabove. The present appeals purported to have been filed under Section 18 of the Ordinance. Can such an appeal be held to be maintainable in the background that Rajasthan High Court Ordinance has been repealed? To answer this question, it is necessary to examine certain other

judgments of this Court which has been relied by the learned Counsel for the appellant, Mr. R. K. Mehta.

7. The counsel for the appellant, Mr. R. K. Mehta has relied on the case decided in the matter of *Abdul Rehman v. Smt. Prasony Bai*, reported in ³ in which the order of Single Judge was challenged after repeal of Section 18 of the Rajasthan High Court Ordinance i.e. 29-8-2001, after gazette publication. The order of Single Judge was passed on 29-11-2001 i.e. after repeal of Section 18 of the Ordinance. This Court has found in paragraph 5 of the judgment thus:-

"Mr. Ashok Gaur has appeared on his own on behalf of respondent Prasony Bai and raised a preliminary objection that this special appeal under Section 18 of Rajasthan High Court Ordinance, 1949 is not maintainable. The preliminary objection has been opposed by Mr. Asopa, learned Counsel appearing on behalf of appellant. We find that the learned Single Judge has exercised the powers of original jurisdiction while passing the impugned order. We, therefore, find that the objection against maintainability of appeal cannot be sustained and the same is hereby rejected."

8. Thus, this Court has held in this judgment that appeal is maintainable under Section 18 of the Ordinance. The Court has not noticed the effect of repeal of Ordinance in this judgment. The only ground relied by the Court is that the learned Single Judge was exercising original jurisdiction.

9. Learned Counsel for the appellant has further placed reliance on another Division Bench Judgment of this Court in the case of *Union of India v. Brij Lal Prabhu Dayal* ⁴ This Division Bench of this Court considered the question of remedy of intra-Court appeal. While addressing itself, the question raised by the Court was in the following terms:

"The question is whether remedy of intra Court appeal provided under relevant Letters Patent or High Court Ordinance cases to be available in view of the provisions of Section 54 of the Land Acquisition Act. The question whether once an appeal is provided to High Court under relevant statute, which is to be heard and decided by the learned Single Judge as per the High Court Rules and intra Court appeal under the Letters Patent is maintainable or not was not the

issue in the two cases referred to above, therefore, said decisions do not govern the controversy before us."

The Court noticing various decisions of various Courts came to the conclusion thus:-

"We find in the above provision that though an appeal is provided directly to the Supreme Court from the judgment and decree passed by High Court in appeal under Section 54, it does not exclude specifically or by necessary implication any intra-Court appeal as may be provided under Letters Patent Act or High Court Ordinance nor any prohibition against 'Second appeal' as such was envisaged as under the Arbitration Act. A decree passed by the learned Single Judge of High Court is as much a decree passed by High Court as a decree passed by Division Bench. Therefore, filing of appeal intra Court within the High Court as per the specific provisions contained in Rajasthan High Court Ordinance or Letters Patent Act that were existing prior to commencement of the Constitution under Article 225, would not alter the nature of decree passed by either of the forum, from a decree passed by High Court to some other Court, so as to affect the provision of ultimate appeal to Supreme Court from a decree passed by High Court in appeal, when no such provision, can be spelt out from Section 54 express or by necessary implication."

This Division Bench of this Court has further held thus:

"A Full Bench of this Court considered the provisions of Motor Vehicles Act, 1939 which provided the remedy of appeal in the followings : 'The State Govt. or any person aggrieved by an order subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal, may within 90 days from the date of award, prefer an appeal to the High Court.'

The contention has been raised that since only one appeal ('an appeal') has been provided to the High Court, whether the matter is heard by Single Bench or Division Bench, no further appeal was envisaged to High Court from a judgment of learned Single Judge to Division Bench. The High Court relying on the decision of Supreme Court in *N.S. Thread Co. v. James Chadwick and Bros.*,⁵ held that once an appeal reaches the High Court it has to be determined according to the rules of practice and procedure of that High Court. The Court referred to the following passage from the decision of N.S. Thread Company's case.

"Obviously, after the appeal had reached to High Court it has to be determined

according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which the 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 that appeal must be regulated by the practice and procedure of that Court."

We have noticed that the practice and procedure for the High Court continued to regulate the practice and procedure which was in force at the time of commencement of the Constitution until a contrary provision is made by the legislation in that regard, as per the provisions of Article 225. Thus, said appeal, so long as it remains in High Court, is to be governed by practice and procedure of High Court including right of intra Court appeal to Division Bench."

10. Thus, it would be seen that purport of the judgment in Brijlal Prabhu Dayal's case, (2002 AIHC 3138) (Raj) is to the effect that an appeal would be maintainable in the High Court as intra Court appeal in the following circumstances:

- (i) As per the specific provisions contained in Rajasthan High Court Ordinance;
- (ii) Or Letters Patent Act that were existing prior to commencement of the Constitution under Article 225.
- (iii) Once an appeal reaches the High Court, it has to be determined according to the rules of practice and procedure of that High Court.

11. It is noticed from the discussion contained hereinabove of the various decisions of Division Bench of this Court that there is difference of opinion in Division Benches regarding the maintainability of an appeal under Section 18 of the Rajasthan High Court Ordinance, which now stands repealed. Ordinarily, such a situation would have required a request to the Hon'ble Chief Justice for referring the matter to a Larger Bench and resolve the dispute.

12. A three Judges Bench decision of Hon'ble Supreme Court is available which covers the field and we have given our conscious consideration to the law laid down in the judgment. We propose to deal with the points of controversy in the right of decision of Apex Court reported in in the matter of '*P.V. Hemalatha v. Kattamkandi Puthiya Maliackal Saheeda.*'⁶

13. The first point which requires consideration is that after repeal of Section 18 of the

Rajasthan High Court Ordinance, an appeal be preferred in the High Court against the decision of a learned single Judge of this Court considering that to be an appeal under the Letters Patent as has been noticed by this Court in the decision of Brijlal Prabhudayal (2002 AIHC 3138) (supra)

14. Hon'ble Supreme Court in the case of Hemalatha (AIR 2002 Supreme Court 2445) (supra) has held in detail about the maintainability of an appeal as Letters Patent of appeal in the following terms :

"Letters Patent is a word of definite legal meaning. It is derived from Latin word 'literate patents.'" The letters patent are so called because "they are open letters, they are not seal up, but exposed to view, with the great seal pendant at the bottom; and are usually directed or addressed by the kind to all his subjects at large. And therein they are different from certain other letter of the kind, sealed also with the great seal, but directed to particular persons, and for particular purposes, which therefore, not being proper for public inspection, are closed up and sealed on the outside, and are thereupon called writs close, literate clause and are recorded in the close- rolls, in the same manner as the orders are in the patent rolls.

35. Different Letters Patents have handed down by the Sovereign in British India to chartered High Courts which included only Judicature for Bengal, Madras, Bombay, North West Provinces (Allahabad) and other like Patna (1916), Lahore (1919), Rangoon (1922). The history of these Courts is that the Sovereign established them as superior Courts in British India under the Indian High Courts Act of 1861 and powers and jurisdiction of Court including Judges of these Courts were laid down in Letters Patent."

15. The aforesaid enunciation of law by Apex Court show that letters patent were handed over by the Sovereign in British India to chartered High Courts which included only Judicature for Bengal, Madras, Bombay, North West Provinces (Allahabad) and other like Patna, Lahore, Rangoon. But no letters patent was handed over to the High Court of State of Rajasthan as neither, the State of Rajasthan nor its High Court was in existence when the Sovereign in India handed over the letters patent. Thus, the appeal in the nature of letters patent is not maintainable in this Court as was held by Apex Court in the case of Hemalatha (AIR 2002 Supreme Court 2445) (supra). It has been held that:

"Undisputedly, High Court of Kerala is not a Chartered High Court and was not a Court in British India. It was a High Court established after formation of the new State of Kerala in 1956 under S.R. Act of 1956. High Court of Kerala, therefore, has no Letters Patent."

16. The Kerala High Court came in existence with formation of State of Kerala in 1956 under States Re-organization Act, 1956 (hereinafter referred to as the Act of 1956). Therefore, a High Court, which had not been handed over the letters patent, cannot have letters patent. The Rajasthan High Court was not a chartered High Court being not a Court in British India, it was a Court only established after independence. Thus, the law laid down by Hemalatha's case (supra) excludes the permissibility of an appeal being filed under the color and design of letters patent.

17. The effect of Act of 1956 has also been considered by the Hon'ble Supreme Court in the case referred to hereinabove and the Hon'ble Supreme Court has observed as such.

"We do not find it possible to accept the argument advanced for the petitioner that Letters Patent of Madras High Court can be made applicable to the cases arising for Calicut as part of erstwhile Malabar District of erstwhile State of Madras which now forms part of the territories of the new State of Kerala."

"26. Thus, the Travancore-Cochin Act was applicable to the new High Court of Kerala only between the period 1-11-1956 that is the appointed day. " When the transitory provisions contained in Part V of S.R. Act, 1956 were in operation to 9-3-1957 when Kerala Act came into force dealing with jurisdiction and procedure of new High Court of Kerala. The new legislation for Kerala Act had an overriding effect and operation from the date of enforcement of that Act i.e. 9-3-1957. This is the legal result of overriding effect of Section 69 of the S.R. Act, 1956 which saves law applicable to corresponding State only till legislation is brought in for the new State and its High Court."

18. Thus, it would be seen that law applicable in any other State is not enforceable in another State. Transitory provisions as permitted under the Act of 1956 were effective only for a limited period.

19. Another aspect, which has been considered by this Court, is the importance of

Article 225 of the Constitution of India. Article 225 of the Constitution of India is quoted herein below for ready reference.

"225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any powers to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Court, shall be the same as immediately before the commencement of this Constitution."

20. As per the providence of this Article, the powers of the Court shall be same as immediately before the commencement of this Constitution. Such powers have been defined by the Article as jurisdiction of Court, law being administered and respective powers of the Judge thereof in relation to the administration of justice including any power to make rules of Court and to regulate the sittings of the Court, sitting alone or in Division Benches. The Constitution commenced in the year 26th Nov. 1949 and made operative on 26th January, 1950. Rajasthan High Court was then governed by the Rajasthan High Court Ordinance which became Act subsequently by the legislation. This Act was to govern therefore, the jurisdiction of the Court. The Act having been repealed and no saving clause being provided, the effect of Act stands obliterated and thus, the effect of providence of Article 225 of the Constitution of India has lost significance. Thus, it can be seen that the appeal as sought to be enforced is not available under the effect of Article 225 of the Constitution of India also. In *Brijlal Prabhu Dayal* (2002 AIHC 3138) (Raj) (supra), it has been considered that under Letters Patent, an appeal could be filed in view of Article 225 of the Constitution of India. This proposition is against the law laid down by Apex Court in the case of *Hemalatha* (AIR 2002 Supreme Court 2445) (supra).

21. The discussion of law made hereinabove show that :-

- (i) The provision of Rajasthan High Court Ordinance stand repealed. This repeal is without any saving clause.
- (ii) Letters Patent was never in vogue in the State of Rajasthan.
- (iii) Practice and procedure do not create a substantive right of appeal.

22. In the case of Abdul Rehman (2002 (2) WLC (Raj) 488) (supra), this Court has held that an appeal would be maintainable because the learned single Judge was exercising original jurisdiction. We are afraid that there is no sanction of law where, it is provided that as and when a single Judge exercises original jurisdiction, an appeal would be maintainable. In view thereof, these observations have no sanction of law.

23. Now, we will consider the questions raised by the learned Counsel for the appellant Mr. D.K. Parihar who appears for the appellant in one of the appeals.

24. One of the arguments raised by Mr. Parihar regarding maintainability of appeal is an appeal in the nature of Letters Patent. Learned Counsel has placed reliance on decision of Hon'ble Supreme Court in the case of '*Gari Kapati Veeraya v. N. Subbiah Choudhari reported in* ⁷The judgment in question related to Clause 39 of Letters Patent Act, 1865. It related to the High Court of the three Presidency towns to which Letters Patent was handed over by the British ruler while they were governing this country. At the relevant time, Rajasthan High Court or State of Rajasthan was not in existence and, therefore, there was no question of Letters Patent being handed over to the Rajasthan High Court and, therefore, Rajasthan High Court cannot entertain an appeal in the nature of Letters Patent. Such is the law laid down in the case of Hemalatha (AIR 2002 Supreme Court 2445) (supra) and thus, this argument of the learned Counsel for the appellant is rejected.

25. Another argument raised by the learned Counsel for the appellant is in relation to Act of 1956 and he has placed reliance on Section 52 of Act of 1956. The question of Act of 1956 has been considered in detail by the Apex Court in the case of Hemalatha (AIR 2002 Supreme Court 2445) (supra) and it has been observed by Apex Court that the provisions were transitory in nature. It would be worthwhile to quote a portion of judgment of Apex Court in the case of Hemalatha (supra) which reads as under:

"23. As we have noticed above, 'practice and procedure' of the High Court of new State is dealt with in Section 54 and 'powers of Judges' is a subject dealt with in Section 57. The Scheme of the Act, as disclosed on a conjoint reading of Sections 52, 54, and 57, makes it manifest that subjects 'practice and procedure' and 'powers of Judges' specifically covered by Sections 54 and 57 respectively are treated separately from 'jurisdiction' dealt with in Section 52 of the S.R. Act,

1956. The expression 'jurisdiction' - original or appellate, in Section 52 has, therefore, to be assigned a restrictive meaning as not to include within it 'practice and procedure' of the High Court and 'powers of Judges' which are subjects separately dealt within Section 54 and 57 respectively. The expression 'other jurisdiction' used in Section 52, therefore, has to be understood as not including in it the law relating to 'practice and procedure' of the High Court and 'powers of Judges' which are subjects separately dealt with in Sections 54 and 57 of the S.R. Act, 1956.

24. There is another reason for taking such a view of the relevant provisions discussed above. If the expression in Section 52 "other jurisdiction" associated with word 'original and appellate' is interpreted to include 'practice and procedure' and 'powers of Judges' of a High Court, a very incongruous result would ensue which according to us can never have been intended by the Legislature which was enacting a transitory provision to lay down a uniform procedure for all the integrating territories of the High Court of new State until suitable legislation on the subject is brought into force."

26. The Apex Court has further held that if the legislature makes new law in respect of the High Court, then such law would have overriding effect. Thus, the Rajasthan High Court Ordinance being in existent, it had overriding effect over the State Reorganization Act and its application stood excluded over and above Rajasthan High Court Ordinance. Thus, the provisions of Act of 1956 has no application in relation to the right of an appeal under a repealed Statute.

27. Another argument raised by the learned Counsel for the appellant is in relation to Section 6 of the General Clauses Act. According to the learned Counsel for the appellant, Section 6(c) of the General Clauses Act, 1897 saves the right, privilege and obligation under the repealed statute. Section 6(c) of the General Clauses Act, 1897 is quoted for ready reference :-

"6. (c). affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or"

28. Section 6 of the General Clauses Act has come for interpretation by various Courts at different point of time. It has been observed in the case of '*Lalji Raja and Sons v. Firm Hansraj Nathuram*' reported in ⁸ that one who claims the right has to establish

that the right has accrued in his favour. Such accrued right is not intended to preserve the abstract rights conferred by the repealed Act.

29. Hon'ble Supreme Court in a case of '*Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal, reported in*⁹ has observed that Section 6 covers all kind of rights and privileges embodied from clause (a) to (e) of Section 6 and those rights and privileges under it are limited to that which are acquired and accrued.

30. Hon'ble Supreme Court in another case reported in *Union of India v. Indian Charge Chrome*¹⁰ has held that mere pendency of an application does not govern the law applicable and it is relevant law prevailing on the date of decision making which has to be applied. At this juncture, it would be important to note the scope of procedural law. Hon'ble Supreme Court in the case of '*Anant Gopal Sheorey v. State of Bombay*' reported in¹¹ has held that no person has a vested right in any course of procedure . If during the pendency of the litigation, procedure is altered, the concerned person has no other right, than one being under the altered mode. Thus, what emanates from the law laid down by Hon'ble Supreme Court is that the change in law of procedure operates retrospectively and unlike the law relating to vested right, is not only prospective.

31. Thus, following the ratio flowing from the various decisions of Hon'ble Supreme Court, if the case in hand is considered, it would be seen that the judgment against which an appeal has been sought to be preferred has been delivered after the repeal of High Court Ordinance. On that day, Section 18 was not surviving. The appeal is admittedly preferred under Section 18. Thus, it would be considered that no right to file intra-Court appeal survived in or rather accrued to the litigant. This Court in a Full Bench decision rendered in the matter of *New India Assurance Company Ltd. v. Santosh* reported in¹² has considered the question of maintainability of an appeal and has referred a Supreme Court decision. It has been held by Hon'ble Supreme Court in the case of *N.S. Thread Company v. James Chadwick, reported in*¹³ as under :-

"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 accordance with the provisions of the charter under which the 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 that appeal must be

regulated by the practice and procedure of that Court."

32. Thus, from the aforesaid, it is clear that if the law governing the High Court does not save any appeal which the appellants want to enjoy, then it cannot mean that the appeal is available to the appellant. According to practice and procedure, the appeal under Section 18 of the Rajasthan High Court Ordinance stood excluded. Thus, the appeal cannot be considered to be available to the appellants.

33. Learned Counsel for the appellant has further submitted that what to speak of special appeals against final orders, this Court is entertaining appeals even against interlocutory orders, therefore, it would not be appropriate to say that the present appeals are not maintainable because they are against the final orders. Moreso, if this Court entertains the special appeals every day, even after repeal of the Ordinance and the judgment of the Division Bench in *Vasna Ram* (2002 (2) WLC (Raj) 383) (supra) refusing to entertain the appeal would amount to discrimination.

34. The argument of the learned Counsel for the appellant cannot be countenanced because this Court has categorically held that no appeal under Section 18 of the High Court Ordinance lies against an interlocutory order. This Court has held in case of *'Ikram v. Union of India'* reported in ¹⁴ that no appeal can be entertained against an interlocutory order. In view of the settled proposition of law, if any appeal is being considered, then, that is not an appeal under the authority of a Statute. Anything contrary to the Statute can only be considered as an illegality. Therefore, this argument of the learned Counsel cannot give rise to any situation, where it can be considered that the right of appeal is available to the appellants. Doctrine, of equality cannot be resorted to in order to perpetuate an illegality.

35. Ordinarily, as observed by us earlier, as and when conflict of opinion is available in various Benches of High Court, the dispute is resolved by requesting the Hon'ble Chief Justice to make reference to a Larger Bench. In the instant case, *Vasna Ram* 's case (2002 (2) WLC (Raj) 383) (supra) was decided on 13-12-2001 and other decision referred to hereinabove that of *Brijlal Prabhu Dayal* (2002 AIHC 3138) (Raj) (supra) was decided on 18-2-2002. Thus, it is seen that it was not considered fit by the concerned to make a reference in this light. We thought that we could make a request to the Hon'ble Chief Justice for reference. But then, we had before us the Apex Court decision in case of *Hemalatha* (AIR 2002 Supreme Court 2445) (supra) which was

covering the entire controversy and therefore, instead of choosing to request the Hon'ble Chief Justice for making reference, we decided to go ahead with the decision consciously. The decision of the Apex Court sets controversy at rest. An appeal can be maintainability only under the statutory provisions and it is not available as courtesy.

36. It may also be noted that one of the cases in which appeal has been preferred is emanating out of Industrial Disputes Act, which by itself provides no appeal. Thus, no right accrued to the appellant under the Industrial Disputes Act against an award in the writ petition. A writ petition is available only as a discretionary remedy. Since the writ petition by itself is a discretionary remedy, and is not referred as a right, it cannot be said that any right can be seen as a vested right of a litigant submitting a writ petition. When the original writ proceedings do not confer any vested right on the appellant, an appeal sought to be preferred cannot be considered against the judgment in writ petition to be one available as a right conferred under Section 6 of the General Clauses Act. Further, in this Court, writ petitions have been heard by Division Bench at times. Still a large number of such petitions are heard by Division Bench. As per Rule 55 of High Court Rules, any case can be assigned by the Hon'ble Chief Justice to a Division Bench. In such cases also, no vested right of appeal has been recognized. Thus, it can be safely said that in the matter of writs, no vested right of appeal exists in this Court.

37. The second proceeding in the case is under Motor Vehicles Act. Motor Vehicles Act provides an appeal under Section 110 (d) saying that an appeal shall be available to be preferred to the High Court. This Court has interpreted the term 'appeal'. It has been held that it does not mean one appeal or more. The right will have to be seen in Section 110(d) of M.V. Act. No multiple appeals is seen in this. Therefore, it cannot be said that Section 6 General Clauses Act saves any right of appeal if the law has been changed.

38. Further, the appeal has to be considered to be in accordance with 'practice and procedure' of the High Court. The practice and procedure stands amended by repeal of Rajasthan High Court Ordinance and therefore, with this appeal, the procedure got radically changed in itself. Such a change does not save any right in a procedural matter. Thus, also no appeal is maintainable.

39. The decision in the case of Brijlal Prabhu Dayal (2002 AIHC 3138) (Raj) (supra) has been passed without the consideration of the judgment in the case of Vasna Ram

(2002 (2) WLC (Raj) 383). May be the Members of Bar never brought it to the notice of the Court. In deciding Abdul Rehman's case (2002 (2) WLC (Raj) 488) (supra), the Court has not thought fit to discuss the relevant law. Thus also, they are not the cases laying down law on the point.

40. The over all result of the discussion made hereinabove is that view of the law laid down by the Hon'ble Supreme Court in Hemlatha (AIR 2002 Supreme Court 2445) (supra), no appeal of Division Bench is available to a litigant after repeal of Section 18 of the Rajasthan High Court Ordinance. The analogy relied upon in the case of Brijlal Prabhu Dayal (supra) and Abdul Rehman (supra) clearly stands negated by this judgment. Thus, it is not legal to consider any appeal before the Division Bench, as the same is not maintainable.

41. In view thereof, both the appeals before us are held to be not maintainable. Hence, dismissed.

Appeals dismissed.

Cases Referred.

1. 2002 (2) WLC (Raj) 383
2. 2002 (1) WLC (Raj) 67
3. 2002 (2) WLC (Raj) 488
4. (D. B. Civil Special Appeal No. 9/99) decided on 18th February, 2002
5. AIR 1953 SC 357
6. 2002 AIR SCW 2691: (2002) 5 SCC 548
7. AIR 1957 SC 540
8. AIR 1971 SC 974
9. (2001) 8 SCC 397
10. (1999) 7 SCC 314
11. AIR 1958 SC 915
12. (1995) 1 Raj LR 584
13. AIR 1953 SC 357
14. 1980 Raj LW 253: (AIR 1980 Raj 182)