

RAJASTHAN HIGH COURT

Rajasthan State Road Transport Corporation

Vs.

Vaibhav Kumar

Civil Spl. Appeal No. 10 of 2006 and others
(R.M. Lodha and Vineet Kothari, JJ.)

08.03.2007

JUDGMENT

R.M. Lodha, J.

1. In this group of 30 Special Appeals, the specific question that needs to be considered by us is whether the right of special appeal from the judgment/order of the single Judge passed in appeal under Section 173 of the Motor Vehicles Act, 1988 has been taken away by Section 100A of the Civil Procedure Code amended vide Act 22 of 2002 which came into effect from 1st July, 2002.
2. Some of the matters out of this group came up for admission on 12th February, 2007. At the time of motion hearing, the Division Bench presided over by one of us (R.M. Lodha, J.) expressed doubt about the maintainability of such appeals in view of Section 100A of the Civil Procedure Code.
3. The issue being an important one in law, a general notice was given to the members of the Bar and the Rajasthan High Court Bar Association to assist the Court, if they so desired. Consequently, the entire group of these special appeals has been posted before us for consideration of the aforesaid question.
4. At the outset we may notice that the Division Bench of this Court in the case of *Fazal Ali v. Amna Khatun*,¹ has taken a view that Section 100A of the Civil Procedure Code does not take away the Letters Patent jurisdiction of the High Court as the Tribunal under the Motor Vehicles Act is not a Civil Court as contemplated under the Civil Procedure Code. The Division Bench held that the provision contained in Section 100A of the Civil Procedure Code is applicable to only decree or order passed by a Civil Court, even those arising under the special enactments but not the order

passed by the Tribunal. It has thus been held that a special appeal against the judgment or order of a Single Judge in an appeal preferred under Section 173 of the Motor Vehicles Act is maintainable and the amended provision of Section 100A of the Civil Procedure Code introduced by the Civil Procedure Code (Amendment) Act, 2002 has no impact on the power of a Division Bench to entertain and adjudicate the same.

5. Being a co-ordinate Bench, ordinarily, we would have referred the matter to the larger Bench. However, this exercise is unnecessary in view of the authoritative pronouncement of the Supreme Court in the decision given recently on 11th August, 2006 in the case of *Kamal Kumar Dutta and Anr. v. Ruby General Hospital Ltd. and ORs.* ²

6. We may immediately refer to some of the relevant statutory provisions and the decisions which have bearing for decision on the question posed before us.

7. Section 4 of the Civil Procedure Code saves the jurisdiction of the Court in the absence of any specific provision to the contrary and provides thus:

"4. Savings.--(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

8. Section 104(1) of the Civil Procedure Code provides that an appeal shall lie from the orders mentioned there under and save as otherwise expressly provided in the Code or by any law for the time being in force from no other orders, which reads thus:

"104. Orders from which appeal lies.- (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:"

9. Section 104(1) contemplates appeals against the three types of orders; (one) orders enumerated therein; (two) appeals otherwise provided in the body of Civil Procedure Code; and (three) appeals provided for by any law for the time being in force.

10. Insofar as Section 104(2) is concerned, it only bars appeals from the orders passed in appeal under the section. It does not bar appeals permitted by any law in force.

11. Section 100A in the Civil Procedure Code was introduced for the first time by Section 38 of the Civil Procedure Code (Amendment) Act, 1976 which came into

effect from 1st February, 1977. The section so introduced reads thus:

"Section 100A. No further appeal in certain cases.--Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law in any other law for the time being in force where any appeal from any 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 passed in such appeal."

12. Thereafter, in the year 1999 by Section 10 of Civil Procedure Code (Amendment) Act, 1999 which came into force from 1st July, 2002, Section 100A of the Civil Procedure Code was substituted. The said provision reads as follows:

"Section 100A : No further appeal in certain cases:- Notwithstanding anything contained in any Letters Patent for any High Court in any other instrument having the force of law or in any other law for the time being in force,

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 Court, no further appeal shall lie from the judgment, decision or order of such Single Judge."

13. Section 100A was again amended by Section 4 of the Civil Procedure Code (Amendment) 2002, which also came into force from 1st July, 2002. At present Section 100A is as under:

"Section 100A : No further appeal in certain cases:--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 of such Single Judge."

14. Section 165 of the Motor Vehicles Act, 1988 provides for the constitution of Motor Accident Claims Tribunal. Under the said provision, a person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

"a) is, or has been, a Judge of a High Court, or

b) is, or has been a District Judge, or

c) is qualified for appointment as a Judge of a High Court or as a District Judge."

15. The application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 of the Motor Vehicles Act is required to be made to the Claims Tribunal. Section 168 provides for an award by the Claims Tribunal. Any person aggrieved by an award of the Claims Tribunal may, prefer an appeal to the High Court within the time prescribed under Section 173 of the Motor Vehicles Act, 1988. Section 173 is as under:

"173. Appeals.--(1) Subject to the provisions of Sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court.

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall be against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

16. A Full Bench of the Andhra Pradesh High Court in the case of *Gandla Pannala Bhulaxmi v. APRTC*,³ was seized with the question whether the right of appeal available under the Letters Patent is taken away by Section 100A of the Civil Procedure Code in respect of the matter arising under special enactments or other instruments having the force of law. That was a case where Letters Patents Appeal was preferred from the order of a Single Judge passed in an appeal under Section 173 of the Motor Vehicles Act. The Full Bench of the Andhra Pradesh High Court upon consideration of the amended provision of Section 100A and the judgment of the Supreme Court in the case of *Vinita M. Khanolkar v. Pragna M. Pal*⁴ and another decision of the Supreme Court in *Sharda Devi v. State of Bihar*,⁵ held that Section 100A of the Civil Procedure Code in clear and specific terms prohibits further appeal against the judgment and decree of a Single Judge to a Division Bench notwithstanding anything contained in the Letter Patents. It was held that the Letter Patents which provides for further appeal to a Division Bench remains intact but the right to prefer a further appeal is taken away even in respect of the matters arising under a special enactment or other instruments having the force of law.

17. The view of the Kerala High Court is on the same lines. A Full Bench of Kerala High Court in the case of *Kesava Pillai Sreedharan Pillai and etc. v. State of Kerala*,⁶ was concerned with the question whether an appeal from a judgment, decree or order passed by the Single Judge on an appeal against the order of a Court or tribunal is maintainable despite Section 100A of the Civil Procedure Code effective from 1st July, 2002,

18. The Full Bench of the Kerala High Court noticed that the intention of the Legislature by enacting Section 100A was to abolish an intra-Court appeal to the Bench of two Judges of the same High Court from a decision rendered by a Single Judge, It held that Section 100A of the Code of Civil Procedure would prevail over the provisions contained in Section 5 (ii) of the Kerala High Court Act. We may observe here that the said provision is similar to erstwhile Section 18 of the Rajasthan High Court Ordinance, 1949 regarding further appeal to the Bench of two Judges from the decision of the Single Judge. The Full Bench of Kerala High Court has thus held that the right of further appeal as provided under Section 5 (ii) of the Kerala High Court Act stands abrogated by Section 100A of the Civil Procedure Code w.e.f. 1st July, 2002.

19. The Supreme Court in *Subal Paul v. Malina Paul*,⁷ was concerned with the question whether the Letters Patent Appeal would lie from the judgment of a Single Judge of the High Court under Section 299 of the Indian Succession Act. It was held that the Letters Patent Appeal shall be maintainable from the judgment of the Single Judge of the High Court filed under Section 299 of the Indian Succession Act. Pertinently in Subal Paul's case the Supreme Court observed that whenever a statute provided such a bar it did so expressly as would appear from Section 100A of the Civil Procedure Code. It is also important to notice that in Subal Paul an appeal was preferred before the Division Bench from the order of the Single Judge prior to 1st July, 2002.

20. The Constitution Bench of the Supreme Court in *P.S. Sathappan (dead) by L.Rs. v. Andhra Bank Ltd.*,⁸ extensively dealt with the provisions contained in Section 100A and the other provisions of the Civil Procedure Code, more particularly, Sections 4 and 104 and had held that when the Legislature wanted to exclude the Letters Patent Appeal, it specifically did so and the words used in Section 100A were not by way of abundant caution. This is what the Supreme Court said in P.S. Sathappan (supra)

"It is thus to be seen that when the legislature wanted to exclude a letters patent

appeal it specifically did so, The words used in Section 100A are not by way of abundant caution. By the Amendment Acts of 1978 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a Letters Patent Appeal would not be barred, The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4, Civil Procedure Code. Thus, now a specific exclusion was provided. After 2002, Section 100A reads as follows:

'100A : No further appeal in certain cases:--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 of such Single Judge.

To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100A nor Section 104(2) barred a letters patent appeal."

21. The recent decision that squarely concludes the controversy is the decision of the Supreme Court in the case of Kamal Kumar Dutta 2006 AIR SCW 4594. That was a case where the Company Law Board passed order under Sections 397 and 398 of the Companies Act. An appeal was filed before the High Court under Section 10F of the Companies Act. The said appeal was heard and disposed of by the Single Judge. From the order of the Single Judge under Section 10F of the Companies Act, the matter was carried to the Apex Court. Before the Apex Court, an objection was raised regarding maintainability of the appeal on the ground that the appellants have alternative remedy of approaching the Division Bench under Clause 15 of the Letters Patent and that the appellants ought to have availed the said remedy. Dealing with this aspect, the Supreme Court held that Letters Patent Appeal against the order passed by a Single Judge in an appeal under Section 10F of the Companies Act would not be maintainable. In Para 23 of the judgment, the Supreme Court explained the legal position thus:

"Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by the CLB and against

that an appeal has been provided before the High Court under Section 10F of the Act, that is, an appeal from the original order. Then in that case no further Letters Patent Appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10F of the Act before the High Court. The learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned Counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letters of the Law Minister cannot be read to interpret the provision of Section 100A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge had decided the appeal from the original order has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a Court but it has all the trapping of a Court. Therefore, CLB while exercising its original Jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

22. It would be seen that the Supreme Court held that the power exercised by the Company Law Board under Sections 397 and 398 of the Companies Act is a quasi-Judicial power as original authority. It may not be a Court but it has all the trappings of a Court and, therefore, the Company Law Board while exercising its original jurisdiction under Sections 397 and 398 of the Companies Act passed the order and against that order appeal would lay to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

23. The legal position exposted by the Supreme Court in Kamal Kumar Dutta 2006

AIR SCW 4594, applies on all fours to the order/award passed by the Motor Accident Claims Tribunal under Section 168 of the Motor Vehicles Act and where such order/award is carried in an appeal under Section 173 of that Act. Even if it be assumed that the Motor Accident Claims Tribunal is not a Court as is the term ordinarily understood, it is beyond doubt that such Tribunal has all the trappings of a Court. Though the Tribunals occupy a special position of their own under the scheme of the Courts and Tribunals and special matters and questions are entrusted to them for their decision yet they share with the Courts one common characteristic viz.; both the Courts as well as Tribunals are constituted by the State and are invested with judicial functions as distinguished from purely administrative or executive functions. It is the State's inherent judicial power which is discharged by the Courts and Tribunals. If the Company Law Board constituted under the Companies Act in its adjudicatory powers has the trappings of a Court and an appeal under Section 10F of the Companies Act from its order to the Single Judge is not amenable to further appeal (Letters Patent) to the Division Bench of the same Court because of Section 100A of the Civil Procedure Code, a fortiori, an order passed by the Single Judge in appeal under Section 173 of the Motor Vehicles Act from the order/ award of the Motor Accident Claims Tribunal shall not be subject to intra-Court appeal in view of the bar created by Section 100A of the Civil Procedure Code effective from 1st July, 2002.

24. In Kamal Kumar Dutta 2006 AIR SCW 4594 (supra), the Supreme Court noticed the Full Bench decisions of the Andhra Pradesh High Court and Kerala High Court in Gandla Pannal Bhulaxml AIR 2003 Andhra Pradesh 458 and Kesava Pillai Sreedharan Pillai AIR 2004 Kerala 111, respectively and accepted the legal position expostulated therein that the right of appeal available under the Letters Patent is taken away by Section 100A of the Civil Procedure Code even in respect of the matter arising under special enactments having force of law.

25. On behalf of the appellants it was urged that Section 100A of the Civil Procedure Code does not use the expression 'award' and the only restriction to further appeal is from the Judgment, decree or order in an appeal from the appellate or original decree. They would submit that the 'Judgment', 'decree' and 'order' defined under the Civil Procedure Code under Sections 2(2) and 2(14) respectively do not cover the 'award' passed by the Tribunal under Section 168 of the Motor Vehicles Act and, therefore, Section 100A does not take away the right of further appeal from the decision in the appeal by Single Judge against the award.

26. The distinction drawn by the learned Counsel for the appellants between

'Judgment', 'decree' and 'order' as defined in the Civil Procedure Code on the one hand and the 'award' passed by the Motor Accident Claims Tribunal is of no real help to the appellants. What is important is that the decision of the Single Judge in the appeal under Section 173 of the Motor Vehicles Act is nothing but a Judgment. It is only because it constituted as 'Judgment' that special appeal were maintainable under Section 18 of the Rajasthan High Court Ordinance prior to amended Section 100A. The bar of further appeal is from the judgment and decree of the Single Judge passed in the appellate Jurisdiction. Surely the decision of the Single Judge in the appeal under Section 173 is a 'Judgment'.

27. The Supreme Court in the case of Kamal Kumar Dutta 2006 AIR SCW 4594, has expounded the legal position with reference to Section 100A in unambiguous terms that where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. Applying this ratio, it would be seen that the order/award passed by the Motor Accident Claims Tribunal is an original order and against that an appeal has been provided before the High Court under Section 173 of the Motor Vehicles Act, that is, an appeal from the original order. In this view of the matter, no further appeal (by whatever name called, Letters Patent Appeal or Special Appeal) shall lie to the Division Bench of the same High Court.

28. The decision of this Court in Fazal Ali AIR 2004 Rajasthan 39 (supra) thus, stands impliedly overruled by the decision of the Supreme Court in Kamal Kumar Dutta's case, 2006 AIR SCW 4594. Fazal Ali does not lay down the correct law.

29. In what we have discussed above, we conclude that the Special Appeal from the judgment and order passed by Single Judge of this Court in an appeal under Section 173 of the Motor Vehicles Act against the award of the Motor Accident Claims Tribunal, is not maintainable with effect from the cut-off date i.e. 1st July, 2002 in view of Section 100A of the Civil Procedure Code amended by Section 4 of the Civil Procedure Code (Amendment) Act, 2002.

30. Consequently, all these appeals are liable to be dismissed as not maintainable and are dismissed as such accordingly.

Appeals dismissed.

Cases Referred.

1. 2005 ACJ 29 (Raj)
2. (2006) 7 SCC 613: 2006 AIR SCW 4594.
3. 2003 acj 2004 (AP)
4. AIR 1998 SC 424
5. AIR 2002 SC 1357
6. AIR 2004 Ker 111
7. AIR 2003 SC 1928
8. 2004 (11) SCC 67