

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) No. 269/2007**

RESERVED ON: November 6th, 2008

% DATE OF DECISION : November 21st, 2008

HARDAYAL SINGH Appellant
Through: Mr. G.L. Rawal, Sr. Adv. with
Mr. Kuljeet Rawal, Adv.

Versus

JOGINDER SINGH & ORS. Respondents
Through: Mr. Raju Ramchandran,
Sr. Adv. with Mr. Rajiv Tyagi,
Advocate.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest? Yes

J U D G M E N T

MANMOHAN, J:

1. The present appeal has been filed under Section 39 of the Arbitration and Conciliation Act, 1940 read with Section 10 of Delhi High Court Act against the judgment and order dated 31st May, 2007 delivered by learned Single Judge of this Court. By virtue of the impugned order the learned Single Judge made the Award dated 5th April, 1972 Rule of the Court and directed that a decree sheet be prepared in terms of the Award as objections to the

Award had already been withdrawn and no objections to the Award were pending.

2. Mr. G.L. Rawal, learned Senior Counsel for the Appellant stated that he had no dispute with the Award passed by the learned Arbitrators but as the properties awarded to the Appellant, specially land at Sawan Park, Wazirpur, Delhi, had been fraudulently disposed of by the Respondents, the Award was liable to be set aside. He submitted that the mandate of Section 17 of the Arbitration Act, 1940 had not been followed by learned Single Judge before making the Award Rule of the Court.

3. At the outset, Mr. Raju Ramchandaran, learned Senior Advocate for the Respondents, submitted that the present appeal was not maintainable under Section 39 of the Indian Arbitration Act, 1940 as it was not against any of the orders mentioned in Clauses (i) to (vi) of Section 39. Section 39 of the Arbitration Act, 1940 is reproduced hereinbelow for ready reference :-

"39. Appealable orders. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:-

An order-

- (i) superseding an arbitration;*
- (ii) on an award stated in the form of a special case;*
- (iii) modifying or correcting an award;*
- (iv) filing or refusing to file an arbitration agreement;*
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;*
- (vi) setting aside or refusing to set aside an award;*

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) 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].”

(emphasis supplied)

4. Mr. Ramchandaran referred to the observations of the Supreme Court in ***Union of India vs. Mohinder Supply reported at AIR 1962 SC 256*** wherein it has been held that the right to appeal is a creature of the statute and the Arbitration Act being a complete code within itself has given a right to appeal only in respect of certain orders and consequently the right to appeal against other orders has expressly been taken away. The relevant observations of the Supreme Court in the said case are reproduced hereinbelow :-

“(5) Under S. 39 (1), an appeal lies from the orders specified in that sub-section and from no others. The legislature has plainly expressed itself that right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in S. 39(1), a right to appeal from a judgment which may otherwise be available under the Letters patent is restricted, there is no ground for holding that cl. (2) does not similarly restrict the exercise of appellate power granted by the Letters Patent...

(6) ... But the right to appeal is a creature of statute; no litigant has an inherent right to appeal against a decision of a Court...

(14) The intention of the legislature in enacting sub-s. (1) of S. 104 is clear : the right to appeal conferred by any other law for the time being in force is expressly preserved. This intention is emphasized by S. 4 which provides that in the absence of any specific provision to the contrary, nothing in the Code is intended to limit or otherwise affect any special jurisdiction or power conferred by or under any other law for the time being in force...

(19).... The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act of 1940 by codifying the law relating to appeals in S. 39..."

(emphasis supplied)

5. Mr. Ramchandran submitted that the said Award became a Rule of the Court by the Judgment and Order dated 18th May, 2007 i.e. after a gap of more than 35 years. During this long stretch of more than 35 years, the Appellant did not even once file any Objections to the Arbitral Award. The other Objectors, who had filed the Objections to the Award, withdrew their objections. Thus when the Award became Rule of the Court, there were no objections pending to the Award. The Award has been made Rule of the Court without any modification or amendment. Learned Senior Counsel further submitted that since the Appellant had no objection to the Award, the Award becoming a Rule of the Court cannot confer any right upon the Appellant to challenge the Judgment and Order by which the Award has been made Rule of the Court.

6. Mr. Ramachandran also pointed out that one of the properties under the Award being a plot of land in Sawan Park, Wazirpur, Delhi fell to the share of the Appellant under the Arbitral

Award. An adjoining plot of land fell to the share of one of the other brothers – Lt. Col. K.S. Mehta, who was the brother of the Appellant and the Respondent No. 1 herein. Both these plots were sold for family necessity in the year 1975 and with the consent of the family members. Later on, in the year 1978, more than 3 years after these plots of land were sold, Lt. Col. K.S. Mehta filed an Application before the learned Single Judge of this Hon'ble Court for impleading the purchasers of the plot of land that fell to his share. Lt. Col. K.S. Mehta initially raised some protest on the sale of his plot of land, but later on settled the matter with the Respondent No. 1.

7. Mr. Ramachandran further stated that the Appellant, on the other hand, did not raise even a whisper of a protest against the sale of plot of land that fell to his share in the year 1975 when the said plot of land was sold after mutual discussions nor even later in the year 1978, when the other brother- Lt. col. K.S. Mehta objected to the sale of his plot of land and also filed an Application before the learned Single Judge of this Hon'ble Court. He also pointed out that not even in the present Appeal, the Appellant has protested the sale of the plot of land that fell to his share. He submitted that the Appellant is merely seeking his 'pound of flesh' by using legal arm-twisting tactics.

8. Mr. G.L. Rawal, learned Senior Counsel for the Appellant submitted that the present appeal is maintainable as it has been filed under Clause 10 of the Letters Patent. Mr. Rawal referred to the judgment of the Apex Court in **Vinita M. Khanolkar v. Pragna M. Pai reported in (1998) 1 SCC 500 at 501** wherein

it has been held as under :-

“2. The short question is whether an appeal would lie before a Division Bench of the High Court against an order of the learned Single Judge rendered by him in proceedings under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as “the Act”). Learned Single Judge passed an order dated 15-11-1994 in Suit No. 411 of 1993 decreeing the suit in terms thereof. When an appeal was carried to the Division Bench of the High Court against the said order, it was contended on behalf of the respondents that the appeal was not maintainable in view of sub-section (3) of Section 6 of the Act. The said provision certainly bars any appeal or revision against any order passed by the court under Section 6 of the Act. To that extent the decision of the Division Bench cannot be found fault with. However, one contention canvassed by learned counsel for the appellant requires closer scrutiny. He submitted that even if an appeal would not lie under sub-section (3) of Section 6 of the Act by itself against any order passed by the court under Section 6 of the Act, this was an order passed by learned Single Judge of the High Court exercising original jurisdiction. Therefore, under clause 15 of the Letters Patent which is a charter under which the High Court of Bombay functioned, the said provision for appeal would not have been whittled down by the statutory provisions of Section 6(3) of the Act. Clause 15 of the Letters Patent is extracted hereunder:

“15. Appeal from the courts of original jurisdiction to the High Court in its appellate jurisdiction.—And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a 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, on or after the first day of February, 1929 in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise

of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided.”

3. Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. No such bar is discernible from Section 6(3) of the Act. It could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High Court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed.

4. The judgment and order of the High Court in Appeal No. 960 of 1994 are set aside and the appeal is restored to the file of the High Court for being proceeded further in accordance with law.....”

(emphasis supplied)

9. Mr. Rawal also submitted that there were similar observations to the same effect in the judgment of the Supreme Court in **Ashok Nagar Welfare Assn. Vs. R.K. Sharma reported in (2002) 1 SCC 749, at 756** wherein it has been held as under :-

“11. However, faced with the above adverse findings of the High Court which are insurmountable, the appellant’s counsel concentrated on the point that no intra-court appeal lies by virtue of the bar enacted in Section 6(3) of the Specific Relief Act. It is contended that the provision in Section 10 of the Delhi High Court Act providing for appeal against the judgment of a Single Judge to a Division Court will be of no avail to assume jurisdiction to entertain the appeal in the face of the bar contained in Section 6(3). This very contention was raised before the High Court. The learned Judges relying on the decision of this Court in Vinita M. Khanolkar v. Pragna M.

Pai held that the prohibition contained in sub-section (3) of Section 6 of the Specific Relief Act will not come in the way of the appellant in challenging the judgment and decree of a Single Judge by way of a letters patent appeal. Learned counsel for the appellant put in the best of his endeavour to distinguish that judgment and also to question the correctness of that judgment on the ground that it was decided “per incuriam”, without regard to the dicta laid down in larger Bench decisions. It is submitted with considerable force that the specific bar enacted in Section 6(3) of the Specific Relief Act cannot be got over by invoking the provision relating to intra-court appeals. It is pointed out that if the view taken by this Court in Vinita case is given effect to, the bar under Section 6(3) will operate in all cases where the High Court has no original jurisdiction to try the suits, whereas it does not come into play if the High Court concerned does not have such jurisdiction. This anomalous position is another reason, according to the learned counsel, to conclude that the embargo against the entertainment of appeal incorporated in sub-section (3) of Section 6 of the Specific Relief Act is absolute and is not effaced by the provisions of the letters patent or the relevant High Court Act. These contentions are not without substance. However, we do not consider it necessary to refer the matter to a larger Bench as we are of the view that this is not a fit case for interference under Article 136 of the Constitution even if we proceed on the basis that the appeal under Section 10 of the Delhi High Court Act was not maintainable.....

13. *Viewed in this light, we do not think that special leave should be granted and arguments shall be allowed to be advanced on the question whether the Division Bench of the High Court could entertain the appeal under Section 10 of the Delhi High Court Act despite the bar under Section 6(3) of the Specific Relief Act. The High Court, by the impugned order, followed the judgment of this Court in Vinita case which prima facie supports its view. That apart, it is pertinent to note that in any case, the High Court, in exercise of another jurisdiction viz. original jurisdiction could have set right the illegality and restored the suits to their file. What the High Court has done is to invalidate the ex parte decrees which were obtained by questionable means fitting into the description of abuse of the process of the court. If such decrees were allowed to remain, it would have resulted in miscarriage of justice. We cannot shut our eyes to the ground realities and the factual events highlighted by the High Court in deciding the question whether we should exercise our discretionary power under Article 136. Incidentally, it may be mentioned that according to the learned counsel for the respondent, the reason for not filing the application for restoration under Rule 13 of Order 9 was the bona fide impression — may be a mistaken impression, that the learned Single Judge of the High Court who allowed the execution of the decree to go on will not be able to interfere in the matter. Be that as it may, we are not persuaded in the peculiar facts and circumstances of the case to grant leave as we feel that affording an opportunity to the defendants to contest the suits on merits is well justified and will have the effect of averting serious injustice. We shall, however, be not understood to have expressed any view on the merits of the suits.*

(emphasis supplied)

10. Mr. Rawal next referred to the order of the Supreme Court in

Jugal Kishore Paliwal v. S. Sat Jit Singh reported in (1984)

1 SCC 358, at 360. The said order is reproduced hereinbelow for ready reference :-

“1. Counsel for both the parties are present and we have heard them at length. The High Court was clearly wrong in refusing to go into the merits of the case on the ground that appeal was not maintainable in view of the full bench decision in University of Delhi v. Hafiz Mohd. Said. This decision is no longer good law in view of our decision in the case of Shah Babulal Khimji v. Jayaben D. Kania where we have laid down various parameters and conditions under which an appeal can lie from a Single Judge to the division bench. Paragraph 115 at page 1816 of the above-referred decision may be extracted thus: (SCC p. 57, para 115)

“Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.”

2. In the instant case as the amendment of the written statement was sought at the time of framing issues and it vitally affects the right of the parties and seeks to work some injustice to the plaintiff, it merits serious consideration by the appellate court on the question whether or not amendment should be allowed. It would certainly not be a purely interlocutory order against which no appeal before the LPA bench would be maintainable. More than this we would not like to say at this stage as we intend to send the case back to the division bench for admitting the appeal and disposing it of according to law on merits. The order of the division bench dated April 1, 1982 is set aside and the division bench is directed to admit the appeal and decide it on merits in accordance with law and in the light of the observations made above. We would request the High Court to decide the appeal as early as possible as the suit is still pending. The appeal is accordingly allowed.”

(emphasis supplied)

11. He also referred to the Division Bench’s judgment of this

Court in case of **Jagmal (Deceased) Thr. Lrs. Vs. MCD** reported in 2008 IV AD (DELHI) 365 wherein it has been held as under :-

“9. We have heard the learned counsel for the appellant as well as the learned counsel for the respondent-Corporation at length. The suit records were also called for and we have gone through the same meticulously. Before, however, we embark upon a discussion of the merits and demerits of the appellants' case, it is worth mentioning that the present appeal was initially filed as a Regular First Appeal, but in view of the provisions of Section 6(3) of the Specific Relief Act, it was directed by a Bench of this Court to convert the same into a Letters Patent Appeal in view of the judgment of the Supreme Court in Vinita M. Khanolkar Vs. Pragana M. Pai AIR 1998 SC 424. In the said case, the Supreme Court held in the context of Section 6(3) of the Specific Relief Act that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court unless the statutory enactment concerned expressly excludes appeals under Letters Patent. No such power is discernible from Section 6(3) of the Act.

*10. We accordingly proceed to dispose of the present appeal as a Letters Patent Appeal by virtue of the constitutional powers vested in us by Clause 10 of the Letters Patent. At the same time, we take note of the decision of the Supreme Court in **Ashok Nagar Welfare Association and another Vs. R.K.Sharma and others** reported in 2001 X AD (S.C.) 284 = (2002) 1 SCC 749 and a decision of this Court in **Arun Khanna Vs. Rajeew Gupta** 2006 (129) DLT 14 to which one of us, Hon'ble Justice Dr. Mukundakam Sharma (as His Lordship then was) was a party. In the first case, the Supreme Court ruled that no appeal shall lie from a judgment and decree of a Court rendered under Section 6 of the Specific Relief Act and that even the power of revision shall not be exercised except in exceptional cases. The ratio of this decision was referred to and relied upon by the Delhi High Court in the latter case.”*

(emphasis supplied)

12. As far as the judgment of the Hon'ble Supreme Court in **Ashok Nagar Welfare Association and Another** (supra) is concerned, we are of the opinion that in the said case the Supreme Court did not decide the issue with regard to intra-court appeals as it was of the view that the Petitioners in the said case had indulged in abuse of process of court and it was not a fit case for interference under Article 136 of the Constitution. In **Jugal Kishore Paliwal** (Supra) the Apex Court again did not deal with

the issue of intra-court appeals in the context of specific prohibition of a statute. In the said case the Supreme Court reiterated the ratio of ***Shah Babulal Khimji vs. Jayaben De Kanya reported in AIR 1981 SC 1786*** and the conditions under which an appeal lies from a Single Bench to a Division Bench.

13. We are of the opinion that Section 39 of the Arbitration Act, 1940 cannot be said to be impliedly repealed by virtue of Section 10(1) of the Delhi High Court Act, 1966. We are supported in our view by a Full Bench judgment of this Court in the case of ***Union of India Vs. A.S. Dhupia reported in AIR 1970 Delhi 108***. The relevant portion of the said judgment is reproduced herein below:-

"2. We have already held in F.A. O. (O.S.) 6 of 1968 (by separate judgment of today) (now reported in AIR 1972 Delhi 102) (FB) that Section 10 (1) of the Act of 1966 provides only a forum of appeal from the judgment of the single judge to a Division Court. We have repelled the argument that the word 'judgment' under Section 10 (1) of the Act of 1966 is to be read as having a meaning which judicial decisions have given to the expression 'judgment' in Letters Patent. According to our judgment, the appeal from the order of a single judge to a Division Court under Section 10 (1) of the Act of 1966 will lie only against orders mentioned in Section 104 read Order 43, Rule 1 of the Code of Civil Procedure (hereinafter called the Code). The contention therefore that Sec. 10 (1) of the Act 1966 confers unfettered right of appeal without any limitation cannot be accepted....

...The Act is a specific Code dealing with the arbitration matters and Section 39 (1) is a special provision indicating the orders which alone are appealable. It is wrong, therefore, to say that Section 10 of the Act of 1966 which only provides for a forum of appeal is special provision and will override Section 39 (1) of the Act....

...Section 39 of the Act which is a special provision dealing with the right of appeal in arbitration matters cannot be said to have been repealed by implication by Section 10 (1) of the Act of 1966."

(emphasis supplied)

14. In the year 1983, Section 39(1) of the Arbitration Act again came up for interpretation before this Hon'ble Court. It was sought to be urged that in view of the subsequent judgment of the Supreme Court in **Shah Babulal Khimji (supra)**, the earlier decision of this Court in **N.K. Pvt. Ltd.'s** case reported in **AIR 1972 Delhi 202** was no longer a good law. However, this contention was repelled by a Division Bench of this Court in **M/S. Banwari Lal Radhey Mohan, Delhi Vs. The Punjab State Co-operative Supply and Marketing Federation Ltd. reported in AIR 1983 Delhi 402** by holding as under :-

"18. All the above arguments fail to notice one salient feature and that is that appeals from the judgment/order of a trial Judge to a larger bench of the High Court would be maintainable unless otherwise so provided either expressly or by implication of any law. Section 4 of the Civil P.C. in terms lays down that when anything in the Civil P.C. is in conflict with anything in the special or local law or with any special jurisdiction or power conferred or any special forum or procedure prescribed by or under any other law, the Code will not, in the absence of specific provision to the contrary, prevail so as to override such inconsistent provision. In the cases cited and considered by the Supreme Court in Shah Babulal Khimji's case (AIR 1981 SC 1786) no inconsistency was pointed out between the provisions of the Code or the provisions of the Letters Patent. In the present case it is not so. Section 39 of the Arbitration Act in terms says that no other orders would be appealable except those specified in the section. Therefore, on the ratio of Shah Babulal Khimji's case, which approves the rule enunciated by the Judicial Committee of the Privy Council in Chowdry's case (1882-10 Ind App 4) it has to be held that no appeal is competent from the judgment under appeal before us. Indeed, if we are to read paras 33 and 34 of the Judgment in Shah Babulal Khimji's case it would become apparent that the Supreme Court, while upholding the right of first appeal against

judgment of a trial Judge from orders from which appeal is permissible under S. 39 of the Arbitration Act impliedly also held that the provisions of Sec. 39 of the Arbitration Act would apply in appeals from orders from which appeal is permissible under Section 39 or was impermissible. Their Lordships in Shah Babulal Khimji's case, a decision rendered by a Division Bench of the Supreme Court, comprising of three Hon'ble Judges noticed with approval the decision of the Supreme Court in the Mohindra Supply Co.'s case (AIR 1962 SC 256) given by a Bench of four Hon'ble Judges. As noticed earlier, maintainability of an appeal from an order amounting to a judgment from which appeal is not permissible on a reading of Section 39 of the Arbitration Act was specifically ruled out in Mohindra Supply Co.'s case. We are bound by that decision."

(emphasis supplied)

15. As far as the judgment of the Apex Court in the case of **Vinita** (supra) as well as a Division Bench's judgment of this Court in the case of **Jagmal** (supra) is concerned, we would like to point out that both the judgments are in the context of Section 6(3) of the Specific Relief Act and not the Arbitration Act, 1940. Moreover, a Constitution Bench of the Hon'ble Supreme Court had an occasion to consider a similar issue in the case of **P.S. Sathappan (Dead) through LRs V. Andhra Bank Ltd. & Ors. reported in 2004 (11) SCC 672**. In this case the Supreme Court dealt at length with the case of **Vinita** (supra) as well as the case of **Mohinder Supply** (supra). The majority view of the Constitution Bench was that appeal is a creature of a statute and an appeal would lie only if the statute permits it. It is pertinent to mention that the issue which arose before the Constitution Bench of the Supreme Court in **P.S. Sathappan's** (supra) was whether Section 104 (2) of C.P.C. would bar an appeal under the Letters Patent. The Apex Court in the said case after analysing Section 4 and Section 104 of the C.P.C. came to the conclusion that Section 104(1) of C.P.C.

specifically saved a Letters Patent Appeal and the only way by which such an appeal can be excluded is by express mention in Section 104(2) of C.P.C. that a Letters Patent Appeal was prohibited. It is pertinent to mention that the Constitution Bench of the Supreme Court in the said case in fact referred to, relied upon and approved the earlier judgment of the Supreme Court in case of **Mohindra Supply** referred to herein above. In **P.S. Sathappan's** case the Constitution Bench reaffirmed that since Arbitration Act, 1940 was a self contained Code relating to arbitrations and there were no similar provisions, like Section 4 and Section 104 (1) of C.P.C., the right of appeal under the old Arbitration Act could only be exercised against those orders mentioned in Section 39 of the said Act. It is pertinent to mention that Hon'ble Supreme Court reached this conclusion after referring to its judgment in the case of **Vinita M. Khanolkar** (Supra) which was strongly relied upon by Mr. Rawal. The relevant paras of **P.S. Sathappan's** case are reproduced herein below for ready reference :-

"10. This Court [in Mohindra Supply case] however noticed that in the Arbitration Act, there was no provision similar to Section 4 of the Code of Civil Procedure which preserved powers reserved to courts under special statutes. Under the Code of Civil Procedure, the right to appeal under the Letters Patent is saved both by Section 4 and the clause contained in Section 104(1), but by the Arbitration Act, 1940, the jurisdiction of the courts under any other law for the time being in force is not saved. The right of appeal could therefore be exercised against orders in arbitration proceedings only under Section 39, and no appeal lay from the appellate order (except an appeal to this Court). The provisions in the Letters Patent providing for appeal, insofar as they related to orders passed in arbitration proceedings, were held to be subject to the provisions of Sections 39(1) and (2)

of the Arbitration Act, as the same is a self-contained code relating to arbitration.....

22. Thus the unanimous view of all courts till 1996 was that Section 104(1) CPC specifically saved letters patent appeals and the bar under Section 104(2) did not apply to letters patent appeals. The view has been that a letters patent appeal cannot be ousted by implication but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation. The express provision need not refer to or use the words "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.....

26. In the case of Vinita M. Khanolkar v. Pragna M. Pai an appeal had been filed against an order passed under Section 6 of the Specific Relief Act. It was contended that such an appeal was barred by sub-section (3) of Section 6 of the Specific Relief Act. This Court agreed that Section 6(3) of the Specific Relief Act barred such an appeal but went on to consider whether Section 6(3) could bar a letters patent appeal. In this context this Court held as follows: (SCC p. 502, para 3)

"3. Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under Letters Patent. No such bar is discernible from Section 6(3) of the Act. It could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would not be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High Court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed."

The question whether a letters patent appeal was maintainable against the judgment/order of a Single Judge passed in a first appeal under Section 140 of the Motor Vehicles Act was considered by this Court in the case of Chandra Kanta Sinha v. Oriental Insurance Co. Ltd. In this case, it was held that such an appeal was maintainable. It was held that the decision of this Court in the case of New Kenilworth Hotel (P) Ltd. was inapplicable.....

34. *An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that.....*

(emphasis supplied)

16. It is pertinent to mention that a Bench of seven Judges of the Supreme Court in **SBP &Co. vs. Patel Engineering Ltd. and Anr., reported in (2005) 8 SCC 618**, has held that any party aggrieved by an order Under Section 11(6) of the Arbitration Act, 1996 can only file a petition under Article 136 of the Constitution of India.

17. Therefore, we are of the view that the present appeal under Section 39 of the Arbitration Act read with Section 10 of the Delhi High Court Act is not maintainable. We may mention that this Court has taken a similar view recently in the cases of **M/s. Canbank Financial Services Ltd. Vs. M/s Haryana Petrochemicals Ltd. & Anr.** in FAO(OS) No. 71/2006 decided on 20th May, 2008 as well as in the case of **M/s. Shyam Telecom Ltd. Vs. M/s. A.R.M. Ltd.** in FAO(OS) No. 198/2004 decided on 30th May, 2008.

18. Consequently, in view of the absolute and specific embargo contained in Section 39 of the Arbitration Act, the present appeal is dismissed as not maintainable. Even otherwise on merits too we are satisfied that the Appellant not having filed any objection to the Award for about 35 years cannot seek to take up these issues belatedly and even if the appeals were held to be maintainable, his pleas in the nature of objecting to the Award deserved rejection on this short ground alone.

MANMOHAN, J

MUKUL MUDGAL, J

NOVEMBER 21st, 2008
rn