

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

Judgment Reserved on: 2nd August, 2011

% Judgment Pronounced on: 1st September, 2011

+ **LPA No.620/2011**

METRO TYRES LTD. & ORS. Appellants

Through: Mr.Akhil Sibal with Ms.Vidhi
Goel, Mr.Pradeep Chindra, Advs.

Versus

SATPAL SINGH BHANDARI & ORS. Respondents

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1 | Whether reporters of the local papers 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 |

DIPAK MISRA, CJ

The present intra-court appeal is preferred against the order dated 16.05.2011 passed by the learned Single Judge in CM Nos.9745/2011 and

CM No.9746/2011 in FAO No.368-377/2005 under Clause X of the Letters Patent whereby the learned Single Judge has declined restoration of the appeals and set aside the order dated 21.8.2009 by which the appeals were dismissed in default.

2. We have heard Mr. Akhil Sibal, learned counsel for the appellants on the question of maintainability of the intra-court appeal as the same arises out of an order not allowing restoration of a first appeal wherein the assail was to the order dated 12.9.2005 whereby the learned Additional District Judge had rejected the application for restoration of Suit No.1564/1996 on the ground that the suit had already abated as a whole due to the failure on part of the plaintiffs to bring on record the legal representatives of some of the defendants.

3. Challenging the said order, it was urged in the memorandum of appeal that the learned Additional District Judge has fallen into grave error by not directing restoration of the suit keeping in view the parameters of Order 9 Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') but taking into consideration a legal position pertaining to abatement of suits, which was not permissible in law. When the first

appeal was listed for hearing on 21.8.2009, the learned Single Judge dismissed the same in default. The application for restoration was filed after 20 months. The learned Single Judge, as is demonstrable from the order, did not think it appropriate to condone the delay and also did not find justifiable ground for directing restoration. Hence, the present appeal.

4. On the question of maintainability being raised, Mr. Sibal, learned counsel for the appellants submitted that but for Section 100A of the CPC the present appeal is maintainable as Section 104(1) clearly saves the Letters Patent Appeal and Section 104(2) is not a bar to the same in view of the decision of the Apex Court in *P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672*. It is his further submission that the object and purpose of Section 100A as has been culled out in *Avtar Narain Behal v. Subash Chander Behal, 154 (2008) DLT 140* is not to allow more than one appeal in the specified matter and as the object is to minimize the delay and give finality to the first appeals, it is imperative that the first appeal should have been disposed of on merits. The learned counsel would further contend that if the litigant is erroneously deprived of an opportunity to address a court on the merits in the first appeal, it would not sub-serve the underlying object and purpose of Section 100A of CPC. The learned

counsel would further contend that the order denying restoration is not a judgment under Clause X of the Letters Patent as has been laid down in *Shah Babulal Khimji v. Jayaben D. Kania & Anr.*, (1981) 4 SCC 8 and the language of Section 100A has to be strictly construed. It is contended by him that the language employed under Section 100A can only get attracted to an appeal which has been heard and decided but not to an order declining restoration of an appeal. That apart, it is propounded by him that Section 2(2) of the CPC that defines the term 'decree' specifically excludes an order of dismissal for default and the language employed under Section 100A has to be understood in proper perspective by reading the terms 'judgment' and 'decree' conjunctively and not disjunctively as that clearly spells out the legislative intendment. Mr. Sibal has proposed that the decisions rendered in *P.S. Sathappan* (supra), *Kamal Kumar Dutta v. Ruby General Hospitals*, (2006) 7 SCC 613 and *Subal Paul v. Malina Paul*, (2003) 10 SCC 361 are distinguishable as in *P.S. Sathappan* (supra), *Kamal Kumar Dutta* (supra), *Avtar Narain Behal* (supra) and *Subal Paul* (supra) the appeal was heard and decided finally by the learned Single Judge. But in the case at hand, the appeal has not been decided on merit. Learned counsel has submitted that the decision

rendered in *N.G. Nanda v. Gurbax Singh*, 174 (2010) DLT 180 (DB) is distinguishable as the court had concluded an order which is appealed against under Order 43 Rule 1 read with Section 14 of the CPC and which cannot be assailed in intra-court appeal in view of the prohibition contained under Section 100A of the CPC but in the said case also the matter was heard and decided on merits by the learned Single Judge and the grounds urged in the present appeal were not advanced before the court.

5. To appreciate the submissions raised by Mr. Sibal, it is apposite to refer to Section 100A of the CPC. It 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.”

6. In *Avtar Narain Behal* (supra), the Full Bench of this court was dealing with a question which is as follows:

“Whether the Letters Patent Appeal against the judgment of Single Judge of this Court in first appeal

would be maintainable having regard to the provisions of Section 100A of the Code of Civil Procedure as amended by Amendment Act, 2002?”

7. While dealing with the said issue, the Bench adverted to Section 10(1) of Delhi High Court Act, 1966 which provides for a Letters Patent Appeal against the judgment of a Single Judge in exercise of original jurisdiction which is known as intra-court appeal. Thereafter, the Bench proceeded to reproduce Section 100A, the pre-amended one as it stood on 1.2.1977, the amendment that was eventually brought into the statute book on 1.7.2002 and discussed the decisions rendered in *P.S. Sathappan* (supra), *Avtar Narain Behal* (supra), *Salem Advocate Bar Association, T.N. v. Union of India*, (2003) 1 SCC 49 and came to hold as follows:

“22. A plain reading of the provisions of Section 100A of the Code of Civil Procedure makes it very clear that there is complete prohibition of filing a further appeal against a decree and order of a Single Judge. The said legislative declaration prohibits preferring a further appeal against the judgment and decree of a Single Judge if an appeal is provided in any other law for the time being in force. Thus, as prohibited by Section 100A, decree of a Single Judge is barred, not only under the Letters Patent of any High Court but also under any special enactment under which such appeal is provided. Section 15 of the Delhi High Court Act provides that the provisions of Act are subject to any provision that may be made on or after the appointed day with respect to

the High Court by the Legislature or other authority having power to make such provision. The non-obstinate clause in 100A of the Code has the effect of taking away the right of appeal which is available under Section 10 of the Delhi High Court Act. The use of the expression “notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or any other law for the time being in force” is clearly indicative of the Legislature intention to totally bar Letters Patent Appeal against the judgment rendered by a Single Judge in an appeal arising from an original or appellate decree or order. The language of Section 100A does not suggest that the exclusion of the right of appeal available under the Letters Patent is confined only to the matters arising under the Code and not under any enactments.

23. The next submission of Mr. Arvind Nigam is that even if it is held that Section 100A would bar a Letters Patent Appeal arising under a special enactment nevertheless those provisions will not operate to bar the present Letters Patent Appeal, since the proceedings commenced long prior to the insertion of Section 100A of the Code of Civil Procedure. It is true that right of appeal is a matter of substance and not of procedure, and such right is vested on the date when the original proceedings are instituted. However, the vested right of appeal can be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment. In *Bhenoy G. Dembla v. Prem Kutir (P) Ltd.*, (Bom.) 2003 Company Cases (Vol. 117) 643, a Division Bench of the Bombay High Court to which one of us (A.P. Shah, C.J.) was a party held that the provisions of Section 100A are to the effect that 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. The use of the word “is” would make it abundantly

clear that what the legislature intended was that no further appeal should be maintainable where any appeal from an original or appellate decree or order is heard and decided after July 1, 2002, by a Single Judge of a High Court. Therefore, the necessary intendment of Section 100A is that where the appeal from an original or appellate decree is decided by a Single Judge of a High Court after July 1, 2002, no further appeal would be maintainable. To hold otherwise would run contrary to the plain intendment, as well as the object and underlying purpose of Section 100A. In introducing the amended provisions of Section 100A, the legislature was concerned as much with the existing backlog of cases as the accretion to the backlog that would accrue by the institution of fresh cases after the amended provisions were brought into force. Consequently, it would be unreasonable to attribute to the legislature the intendment that while seeking to bring into effect a provision which was intended to cure the delays of litigation, the legislature would have intended to exempt from its purview all cases which have filed prior to the date on which the amendment was brought into force. As noticed earlier a similar submission was expressly rejected by the Supreme Court in *Kamal Kumar Dutta v. Ruby General Hospital* (supra)."

8. In *N.G. Nanda* (supra), the factual matrix was that in a suit, the learned Trial Judge had disallowed the application filed under Order 22 Rule 9 of the CPC praying for setting aside of abatement. The same was challenged in the first appeal, which was allowed. The defendant preferred LPA No. 373/2010. While dealing with the LPA, the Division Bench

relying on *Avtar Narain Behal* (supra) expressed the view that the same was not maintainable. Thereafter, an application for review was filed on the ground that though the appeal was nomenclatured as Letters Patent Appeal, it was fundamentally an appeal provided under Order 43 Rule 1(u) of the CPC and hence the appeal was maintainable. The Division Bench referred to paragraph 32 of *P.S. Sathappan* (supra) wherein it has been held thus –

“It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent, but then which legislation is not subject to amendment or alteration? CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To subject that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in *Vinita Khanolkar’s* case and *Sharda Devi’s* case, a Letters Patent is the charter of the High Court. As held in *Shah Babulal Khimji v. Jayaben D. Kania*, (1982) 1 SCR 187, a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in the aforementioned two cases a Letters Patent cannot be

excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all Courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4, CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A."

9. While dealing with the application for review, the Division Bench referred to the decision in *Avtar Narain Behal* (supra) and stated as follows: -

"In this regard, we may fruitfully refer to the decision in *Avtar Narain Behal v. Subhash Chander Behal*, 154 (2008) DLT 140 wherein a Full Bench of this Court was dealing with the ambit and sweep of Section 100A of the CPC. The Full Bench took note of Section 4 and Section 104 of the Code. The Bench also referred to the decision in *New Kennilworth Hotel (P) Ltd. v. Orissa State Finance Corporation and Ors.*, II (1997) CLT 250 (SC) = (1997) 1 SCR 395 wherein the question was whether LPA was maintainable or not and in that context, Their Lordships, relying on the decision rendered in *Resham Singh Pyara v. Abdul Sattar*, (1996) 1 SCC 49, opined that LPA would not lie by reason of the bar created by

Sub-section (2) of Section 104 of the CPC. The Full Bench referred to the authority in *Chandra Kanta Sinha v. Oriental Insurance Co. Ltd.*, IV (2001) SLT 423 = (2001) 2 SCR 759 wherein the decision in *New Kennilworth Hotel (P) Ltd.* (supra) was held to be not applicable. Be it noted, reference was made by the Full Bench to the decision in *Subal Paul v. Malina Paul and Anr.*, II (2003) SLT 298 = (2003) 1 SCR 1092. Thereafter, the Full Bench referred to the decision in *P.S. Sathappan v. Andhra Bank Ltd.*, VI (2004) SLT 454 = IV (2004) CLT 74 (SC) = AIR 2004 SC 5152, wherein the Constitution Bench was called upon to resolve the conflict in *New Kennilworth Hotel (P) Ltd.* (supra) and *Gulab Bai v. Puniya*, AIR 1966 SC 637."

After so stating, the Division Bench referred to the analysis made by the Full Bench in *P.S. Sathappan* (supra), *Sharda Devi v. State of Bihar*, AIR 2002 SC 1357 and relied on paragraph 18, which states as follows: -

"A plain reading of the above observations makes it clear that the right of appeal conferred by the Letters Patent can be taken away by the Parliament by enacting appropriate provision in the C.P.C. and the provisions contained in Section 100A of C.P.C. expressly barred a second appeal against a judgment and order in the first appeal passed by a Single Judge."

Eventually, the Division Bench expressed thus -

"In view of the aforesaid, there remains no scintilla of doubt that even an order which is appealed against Order 43 Rule 1 read with Section 104, CPC cannot be

assailed in LPA in view of the prohibition contained under Section 100A of the CPC which in its ambit and sweep covers an appeal from an appellate decree or order.”

10. In the present appeal, what is essentially contended by Mr.Sibal is that when the learned Single Judge has declined to restore the appeal, there has been no adjudication on merits and, therefore, an intra-Court appeal under the Letters Patent Appeal would lie. It has been clearly laid down in *Avtar Narain Behal* (supra) that Letters Patent Appeal would not lie against an order passed in an appeal preferred under Order 41 Rule 1 of the CPC. In *N.G. Nanda* (supra) the said principle has been reiterated.

11. The issue that has been very assiduously urged by Mr.Sibal is that though an intra-Court appeal would not lie against an order passed by the learned Single Judge in a first appeal against an order, yet when the appeal is dismissed and the learned Single Judge declines to entertain the application for restoration, the same can be rectified in an intra-Court appeal. It is canvassed by him, as has been indicated before, the bar under Section 100A of the CPC is not applicable to such a situation. In this context, we may refer with profit to few passages from the Full Bench

decision rendered in *Laxminarayan v. Shivalal Gujar & Ors.*, AIR 2003 MP

49 wherein it has been held thus –

“38. Before we proceed to dwell into that aspect we think it appropriate to dissect whether Section 100A of the Code affects the pending appeals preferred under Clause 10 of the Letters Patent. Submission of Mr. Kale and Mr. Agrawal, the learned Senior Counsel is that the language employed in the said provision being quite clear, unequivocal and unambiguous, it can only have prospective application. To elucidate; submission of the learned Senior Counsel is that the prospective applicability would only encompass that the appeals which would arise out of the suits which are instituted after the cut-off date i.e. 1-7-2002 would be barred. It is contended by them that there is nothing in the said section to convey a different meaning or to expand the canvas. It is put forth by them that Section 16 of the Amending Act deals with ‘repeal and savings’ and in sub-section (2) use of the term ‘without prejudice to the generality of the provisions Section 6 of the General Clauses Act, 1897’ and the exception carved out in Clauses (a) to (c) have to be understood properly to appreciate that other aspects which do not find mention in the aforesaid clauses are to be governed by Section 6 of the aforesaid statute.

39-40. In this context we may profitably reproduce a passage from *Bidie v. General Accident, Fire and Life Assurance Corporation*, (1948) 2 All ER 995, 998 wherein Lord Greene in his inimitable style spoke thus:

“The first thing to one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacua, so to speak, and attribute to them what is

sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: In this state, in this context, relating to this subject-matter, what is the true meaning of what word?"

41. Keeping in view the aforesaid principles of interpretations, now we shall proceed to discuss what exactly is postulated under Section 100A of the Code. The sub-section (2) of Section 1 of the Amending Act stipulates that the amending provisions shall come into force on such dates as the Central Government may by notification in the Official Gazette appoint and different dates may be appointed in respect of different provisions of the Act. This provision is to be read contextually regard being had to the language employed therein. Section 100A of the Code employs the words that 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 from such Single Judge. The words which are of immense signification in this provision are 'is heard and decided'. These words are used absolutely in praesenti. That apart the words "no further appeal shall lie' are also to be conjointly read with 'is heard and decided'.

42. As has been held in the cases referred to above, the words have to be understood in their context having purposive reference to the totality of surrounding features and the true and express meaning decipherable

from the import of the text. The use of the term 'is heard and decided' cannot be expanded to cover the vista that the appeals which arise from the suit instituted before 1-7-2002 are protected. Simultaneously its horizon cannot be cramped and limited to imply and connote that the appeals which have been filed prior to the cut-off date also would be reigned by the said provision. In that case the term 'no further appeal shall lie' used in the provision would lose its intrinsic etymological kernel. To say that the aforesaid provision does not impair or erode the right of appeal vested in a suitor in respect of a suit instituted prior to 1-7-2002, would be reading the provision without giving the true and actual meaning to the term 'is heard and decided'. That would tantamount to, to put it euphemistically, making the provision achromatic. In this context we may profitably refer to the three Judge Bench decision rendered in the case of R. Rajagopal Reddy (dead) by L.Rs. v. Padmini Chandrashekharan (dead) by L.Rs., AIR 1996 SC 238. In the aforesaid decision their Lordships were considering the operational sphere of Benami Transactions (Prohibition) Act, 1988 (Act 45 of 1988) and posed the question whether pending proceeding at various stages in the hierarchy can get encompassed by the sweep of Section 4(1) of the said Act and such suit would be liable to be dismissed as laid down by that Section. After referring to the report of the Law Commission, taking note of the preamble of the Act, considering Section 3 which is the heart of the said Act and further referring to the decision rendered in the case of Re Athlumney, (1898) 2 Q.B. 547 and Garikapati (AIR 1957 SC 540) (supra) and the observations made in the book on Principles of Statutory Interpretation, 5th Edition, by Justice G.P. Singh, at page 351 their Lordships in paragraphs 19 and 20 held as under:

"19. No exception can be taken to the aforesaid observations of learned author which in our view

can certainly be pressed in service for judging whether the impugned section is declaratory in nature or not. Accordingly it must be held that Section 4 or for the matter the Act as a whole is not a piece of declaratory or curative legislation. It creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created by the Act.

20. Qua reason No. 4, we may refer to our discussion earlier that the words 'no suit shall lie' as found in Section 4(1) and 'no defence based on rights in respect of property shall be allowed' as found in Section 4(2) have limited scope and operation and consequently this consideration also cannot have any effect on the conclusion which can be reached in this case. As to reason No. 5, it is observed that even though the suit may include appeal and further appeals in the hierarchy, at different stages of the litigation. Sections 4(1) and 4(2) cannot be made applicable to these subsequent stages as already seen by us earlier. Otherwise, they would cut across the very scheme of the Act."

43. It is appropriate to mention here their Lordships gave a limited retro-activity to the provisions in question.

44. Thus, in our considered view, though there is use of term 'without prejudice to the generality of the provisions of Section 6 of the General Clauses Act' the same does not entirely save the vested rights of appeal in a suitor as that would defeat the very purpose of Legislation, scheme of the amending statute, and also would cause violence to the reading of Section 100A of the Code which is not allowable and we are not inclined

to think that the said provision is totally prospective. It is so to a limited extent.”

12. On a perusal of the analysis in the aforesaid decision, it is clear as crystal that the Bench has opined that words ‘is heard and decided’ as used in Section 100A of the CPC are used absolutely in praesenti. That apart, the Bench had also used the words ‘no further appeal shall lie’ which are to be conjointly read with ‘is heard and decided’. The similar view has been expressed by the Full Bench in *Avtar Narain Behal* (supra).

13. In *Kamla Devi v. Khushal Kanwar & Anr.*, AIR 2007 SC 663, their Lordships have opined thus –

“18. In *P.S. Sathappan (Dead) by L.Rs. v. Andhra Bank Ltd. and others* [(2004) 11 SCC 672], a Constitution Bench of this Court, albeit in reference to Section 104 of the Code, held:

“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 1976 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 C.P.C. 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.”

It was furthermore observed:

“We may notice that when a first appeal or second appeal was disposed of by a Single Judge, a Letters Patent Appeal had been held to be maintainable therefrom only because there existed no bar in relation thereto. Such a bar has now been created by reason of Section 100A of the Code. No appeal would, therefore, be maintainable when there exists a statutory bar. When the Parliament enacts a law it is presumed to know the existence of other statutes. Thus, in a given case, bar created for preferring an appeal expressly cannot be circumscribed by making a claim by finding out a source thereof in another statute.”

19. In *Kamal Kumar Dutta and another v. Ruby General Hospital Ltd. and Ors.*, [2006 (7) SCALE 668], it was observed:

“So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment either expressly or by necessary intendment. The Parliament while amending Section 100A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1.7.2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of learned single Judge to the Division Bench....”

[Emphasis supplied]

20. Keeping in view the principles of law as enunciated in the aforementioned decisions of this Court, it is evident that a letters patent appeal, which was filed prior to coming into force of the 2002 Act would be maintainable.”

14. The legislature at the time of incorporation of Section 100A, as has been interpreted in *Kamla Devi* (supra), *Avtar Narain Behal* (supra) and *Laxminarayan* (supra) intended to give limited retroactivity to the provision in question. The view that has been expressed is that the appeals which have been filed prior to the cut-off date, that is, 1st July, 2002 also would be saved. The contention that the right of a suitor to prefer a Letters Patent Appeal was a vested right, despite the language employed

in Section 100A of the CPC was repealed. Thus, the language employed in Section 100A of the CPC clearly means that no further appeal shall lie from an appeal from an original order or the decree if it is heard or decided by the learned Single Judge by the cut-off date. It does not stand to reason that if appeal filed after the cut-off date before the learned Single Judge is dismissed and thereafter he declines to restore the appeal, a Letters Patent Appeal would lie. The words 'heard and decided' if read out of context would make the entire provision redundant. It has to be interpreted keeping in view the context itself. Section 100A was amended with effect from 1st July, 2002 to take away the further appeal from a decree or an order. The fundamental purpose was to minimize the sphere of appeals. If the submission of Mr.Sibal is accepted as the factual matrix would reveal, a litigant can prefer an appeal under Order 43 Rule 1 and allow it to dismiss for default or show total callousness in getting it dismissed for want of prosecution and thereafter file an application for restoration at his own leisure and being unsuccessful prefer a Letters Patent Appeal contending it is maintainable. Thus, this interpretation could give a premium to an unscrupulous or negligent litigant. That apart, it would be totally against the scheme of Section 100A of the CPC and the same was

not the legislative intendment or purpose. The courts are required to place the interpretation on a provision which would subserve the purpose of the legislative intention unless the same brings in a situation of an irreconciliability or absurdity. In this context, we may profitably refer to the decision in *Chief Justice of A.P. & Ors. v. L.V.A. Dikshitulu & Ors.*, (1979) 2 SCC 34, a Constitution Bench has ruled that it is the duty of the court to understand the legislative intent and for the said purpose the court can call in aid well recognised rules of construction, such as legislative theory, the basic scheme and framework of the statute as a whole. Their Lordships have laid emphasis on the purpose of the legislation and the object sought to be achieved.

15. In *M/s Girdhari Lal and Sons v. Balbir Nath Mathur & Ors.*, (1986) 2 SCC 237 it has been held thus –

“Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide *K.P. Varghese v. ITO*, (1981) 4 SCC 173 : 1981 SCC (Tax) 293, *State Bank of Travancore v. Mohd. M. Khan*, (1981) 4 SCC 82, *Som Prakash Rekhi v. Union of India*,

(1981) 1 SCC 449: (1981) SCC (L&S) 200, *Ravula Subba Rao v. CIT*, 1956 SCR 577 : AIR 1956 SC 604, *Govindlal v. Agricultural Produce Market Committee*, (1976) 1 SCR 451 : (1975) 2 SCC 482 : AIR 1976 SC 263 and *Babaji Kondaji v. Nasik Merchants Co-op. Bank Ltd.*, (1984) 2 SCC 50."

16. In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors.*, (1987) 1 SCC 424 it has been stated thus: -

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

17. In *District Mining Officer & Ors. v. Tata Iron & Steel Co. & Anr.*, (2001) 7 SCC 358, it has been held that while construing a statute it is necessary to seek the intention of its maker. It has to be construed according to the intent of them that makes it and the duty of the court is to act upon the true intention of the legislature. The legislative intention that is the true and legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

18. In view of the aforesaid analysis, we conclude and hold that the present appeal is not maintainable and, accordingly, the same stands dismissed in limine.

CHIEF JUSTICE

SEPTEMBER 01, 2011
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SANJIV KHANNA, J.