

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 28.08.2015

LPA No.816 of 2015

Col. Raghbir Singh & others

...Appellants

Vs.

The Punjab & Haryana High Court & others

...Respondents

**CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present: Mr. Manmohan Singh, Senior Advocate, with
Mr. R.K.Sharma & Ms. Satinder Kaur, Advocates,
for the appellants.

HEMANT GUPTA, J.

The present letters patent appeal is directed against an order passed by the learned Single Bench of this Court on 27.04.2015 in a petition under Article 227 of the Constitution challenging the order passed by the learned District Judge, Rupnagar on 09.03.2015 on an application under Order 7 Rule 11 CPC.

When the appeal came up for hearing before a Division Bench of this Court on 27.05.2015, the counsel for the appellants sought time to argue regarding maintainability of Letters Patent Appeal in the matters arising out of petitions filed under Article 227 of the Constitution against the orders passed by subordinate Courts.

Today, learned counsel for the appellants relies upon the judgments of Hon'ble Supreme Court in Sushilabai Laxminarayan Mudiyaar & others Vs. Nihalchand Waghajibhai Shaha & others AIR 1992 SC 185 and Kishorilal Vs. Sales Officer, District Land Development Bank & others (2006) 7 SCC 496, to contend that an appeal under Clause X of the Letters

Patent is maintainable. Learned counsel for the appellants also referred to few other judgments such as Raj Kishan Jain Vs. Tulsi Dass etc. AIR 1959 Punjab 291, wherein it has been held that an order passed in exercise of supervisory jurisdiction of superintendence is an appealable order.

Though learned counsel for the appellants referred to large number of judgments in support of his arguments, but the matter stands concluded in a recent judgment reported as Radhey Shyam & another Vs. Chhabi Nath & others (2015) 5 SCC 423, wherein it has been categorically held that a writ of certiorari under Article 226 cannot be issued against an order passed by the Civil Court. Such order could be challenged only under Article 227 of the Constitution. The Hon'ble Supreme Court held as under:

“5. Thus, the question to be decided is whether the view taken in Surya Dev Rai Vs. Ram Chander Rai (2003) 6 SCC 675 that a writ lies under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view?

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21. Thus, it has been clearly laid down by this Court that an Order of civil court could be challenged under Article 227 and not under Article 226.

22. We may now come to the judgment in Surya Dev Rai. Therein, the appellant was aggrieved by denial of interim injunction in a pending suit and preferred a writ petition in the High court stating that after CPC amendment by Act 46 of 1999 w.e.f. 1 July, 2002, remedy of revision under Section 115 was no longer available. The High Court dismissed the petition following its Full Bench Judgment in Ganga Saran Vs. Civil Judge, Hapur AIR 1991 All 114 to the effect that a writ was not maintainable as no mandamus could issue to a private person. The Bench considered the question of the impact of CPC amendment on power and jurisdiction of the High Court to entertain a writ of certiorari under Article 226 or a petition

under Article 227 to involve power of superintendence. The Bench noted the legal position that after CPC amendment revisional jurisdiction of the High Court against interlocutory order was curtailed.

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27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.”

Since the order impugned in the present appeal has been passed by the learned Single Bench of this Court in a petition under Article 227 of the Constitution against an order passed by the Civil Court, such order is not appealable in terms of the judgment referred to by the appellants in Sushilabai Laxminarayan Mudiyar’s case (supra).

In Sushilabai Laxminarayan Mudiyar’s case (supra), the Hon’ble Supreme Court was considering Clause 15 of the Letters Patent (Bombay High Court). In the said case, a letters patent appeal was directed against an order passed by the Resident Deputy Collector, Amravati rejecting application for restoration of possession under Clause 13(4) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949. The Court held that an appeal is maintainable against an order passed by the learned Single Judge in a writ petition under Article 226 of the Constitution following earlier judgment in Umaji Kesho Meshram Vs. Radhikabai AIR 1986 SC 1272. In the aforesaid judgment, the Hon’ble Supreme Court held that decision of a Single Judge given in a petition under Article 226 of the Constitution would be appealable to that High Court. However, while examining proceedings under Article 227, the Court held that it is not the

original proceedings. The Court held that an order passed in exercise of the provisions of Article 227 is not appealable. It was observed as under:

“101. Consequently, where a petition filed under Article 226 of the Constitution is according to the rules of a particular High Court heard by a Single Judge, an intra court appeal will lie from that judgment if such a right of appeal is provided in the charter of that High Court, whether such Charter be Letters Patent or a statute. Clause 15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-court appeal and, therefore, the decision of a Single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court.

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103. Under clause 15 of the Letters Patent of the Bombay High Court no intra-court appeal lay against an "order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act". By the same process of interpretation by reason of which the phrase "pursuant to section 108 of the Government of India Act" in clause 15 is to be read as "pursuant to Article 225 of the Constitution of India", the phrase "order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act" is to be read as "order passed or made in the exercise of the power of superintendence under the provisions of Article 227 of the Constitution". The result is that an intra-court appeal does not lie against the judgment of a Single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by clause 15 of the Letters Patent of that High Court. This is the view also taken by different High Courts (see, for instance, Jagannath Ganbaji Chikhale v. Gulabrao Raghobaji Bobde, Sukhendu Barua v. Hare Krishna De & Ors. A.I.R. 1953 Cal. 636, Shrinivasa Reddiar and Ors. v. Krishnaswami Reddiar and Ors., A.I.R. 1955 Mad. 72, In re V. Tirupuliswamy Naidu, I.L.R. 1955 Mad. 1083, s.c. A.I.R. 1955 Mad. 287, J. and K. Co-Operative Bank v. Shams-ud-din- Bacha, A.I.R. 1970 J & K 190, and Ishwar Singh v. Ram Piari and Anr, A.I.R. 1978 H.P. 39).

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106. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque and others [1955] 1 S.C.R. 1104, before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that Rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh and others v. Karan Singh and others A.I.R. 1957 All. 414 F.B. and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass A.I.R. 1959 Punj. 291 and Barham Dutt and others v. Peoples' Cooperative Transport Society Ltd., New Delhi and others A.I.R. 1961 Punj. 24 and we are in agreement with it."

In Shalini Shyam Shetty & another Vs. Rajendra Shankar Patil (2010) 8 SCC 329, challenge in the writ petition under Article 226 was to the concurrent findings of two lower Courts. An argument was raised that the petitions filed against the orders of the Civil Courts under the Bombay High Court Rules, such petitions are called writ petitions. The Hon'ble Supreme Court held that the Bombay High Court Rules do not contemplate that petitions under Article 227 to be called as writ petitions. The Rules provided that the petition under Article 227 filed in respect of certain categories will be heard by a Division Bench hearing writ petitions. This

was found to be merely indicative of the Forum where such petitions would be heard. The Court noticed the distinction between the proceedings under Article 226 and Article 227 of the Constitution. The Court held that a petition filed under Article 227 of the Constitution cannot be called a writ petition. It has been held to the following effect:

“25. The power to issue writs underwent a sea-change with the coming of the Constitution from 26th January, 1950. Now writs can be issued by High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution. No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition. This is clearly the Constitutional position. No rule of any High Court can amend or alter this clear Constitutional scheme. In fact the rules of Bombay High Court have not done that and proceedings under Articles 226 and 227 have been separately dealt with under the said rules.

26. The High Court’s power of superintendence under Article 227 of the Constitution has its origin as early as in Indian High Courts Act of 1861. This concept of superintendence has been borrowed from English Law. The power of superintendence owes its origin to the supervisory jurisdiction of King’s Bench in England. In the Presidency towns of the then Calcutta, Bombay, Madras initially Supreme Court was established under the Regulating Act of 1793. Those Courts were endowed with the power of superintendence, similar to the powers of Kings Bench under the English Law. Then the Indian High Courts in three Presidency towns were endowed with similar jurisdiction of superintendence. Such power was conferred on them under Section 15 of the Indian High Courts Act, 1861.”

The Court in the said case noticed the nature of the power of superintendence under Article 227 of the Constitution while referring to Waryam Singh Vs. Amarnath AIR 1954 SC 215, Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee AIR 1951 Cal. 193 & Nagendra Nath Bora Vs.

Commissioner of Hills Division and Appeals AIR 1958 SC 398. The Court held as under:

“37. The Constitution Bench in Nagendra Nath (supra), unanimously speaking through Justice B.P. Sinha, (as his Lordship then was) pointed out that High Court’s power of interference under Article 227 is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals function within the limits of its authority. (emphasis supplied)

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46. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469)]. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P. and others vs. Dr. Vijay Anand Maharaj – AIR 1963 SC 946, page 951].

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others – [AIR 1955 SC 233, para 20 page 243].”

At this stage, we may notice Clause 10 of the Letters Patent pertaining to this Court. The same is as under:

“10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of 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 High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in 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.”

Clause 10, as reproduced above, excludes an appeal against a judgment passed in exercise of the appellate jurisdiction by a Court subject to superintendence of the High Court not being an order made in exercise of the revisional jurisdiction.

On the other hand, Clause 15 of the Letters Patent of Bombay reads as under:

“15. Appeal to the High Court from Judges of the Court - And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being

an order made in the exercise of revisional Jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 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 made on or after the first day of February One thousand nine hundred and twenty-nine 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 here inafter provided.”

A perusal of the above clause shows that the provisions of the Letters Patent of Bombay High Court are different than the Punjab High Court, which exclude the intra Court appeal against the order passed in revisional jurisdiction. Even under the Letters Patent (Bombay), an appeal is not maintainable against an order passed in petition under Article 227 of the Constitution.

The finding that appeal is maintainable in Sushilabai Laxminarayan Mudiyar and Umaji Kesho Meshram cases (supra), is when an order is passed in a petition under Article 226 and 227 of the Constitution. In view of the judgment in Radhey Shyam’s case (supra), an order passed by the Civil Court cannot be challenged in a writ petition. Therefore, an order passed in exercise of powers under Article 227 of the Constitution is not subject to appeal under Clause 10 of the Letters Patent.

In view of the above, we find that an appeal under Clause 10 of the Letters Patent is not maintainable against an order passed by the learned Single Judge against the order of the Civil Court. It is only order passed in exercise of the powers under Article 226 of the Constitution, which is appealable.

Consequently, the present letters patent appeal is dismissed as not maintainable.

(HEMANT GUPTA)
JUDGE

28.08.2015
Vimal

(SHEKHER DHAWAN)
JUDGE