

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2289 of 2015
IN
Miscellaneous Jurisdiction Case No. 2045 of 2015**

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1. Balmiki Singh,
2. Jai Singh,
3. Upendra Singh,
4. Rabindra Singh,
5. Rajendra Singh,
All sons of Late Siya Ram Singh, residents of Village/P.O: Teus, P.S.: Jairampur,
District: Sheikhpura.

.... Appellants

Versus

1. Sanjay Singh, son of Late Deonandan Singh, resident of Village: Khetalpura,
P.S.: Sare, District: Nalanda.
2. Meena Devi @ Meena Kumari, wife of Shri Kamleshwar Singh, resident of
Village: Teus, P.S: Jairampur, District: Sheikhpura.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Abhay Kumar Thakur, Advocate
Mr. Pawan Kumar Singh, Advocate
For the Respondent/s : None

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 20-01-2016

Against an order passed by a single Judge in a First Appeal — preferred against a decree granted by a civil court — refusing to modify and/or vacate an earlier order, made in the First Appeal, staying execution of the decree, which was appealed against, whether a Letters Patent Appeal, under Clause 10 of the Letters Patent of Patna High Court, lies? This is the moot question, which this Letters Patent Appeal has

raised.

2. We have heard Mr. Abhay Kumar Thakur, learned Counsel, appearing on behalf of the appellants.

3. The material facts and various stages, which have led to the present appeal, may, in brief, be set out as under:

(i) Title Suit No. 37 of 2007 was instituted by the appellants herein as plaintiffs. By the judgment, dated 10.05.2012, the suit came to be decreed. A decree, dated 23.05.2012, was accordingly drawn. The appellants herein, as decree holders, put the decree to execution, whereupon Execution Case No. 07 of 2012 commenced.

(ii) Aggrieved by the decree so made as aforesaid, the respondents herein, who were the judgment-debtors, preferred an appeal, which gave rise to First Appeal No. 113 of 2012 in this Court.

(iii) In the appeal so preferred, an application was filed by the respondents herein (i.e., the judgment-debtors), seeking stay of the Execution Case No. 7 of 2012 pending in the Court of Sub Judge I, Sheikhpura. The application, so made in the First Appeal, gave rise to I. A. No. 5950 of 2014. By order, dated 19.02.2015, passed in I. A. No. 5950 of 2014 aforementioned, a learned single Judge of this Court passed an order staying further proceedings of Execution Case No. 7 of 2012 pending in the Court of learned Sub Judge I, Sheikhpura.

(iv) By making another application, which gave rise to MJC No. 2045 of 2015, the appellants herein, as decree-holders, prayed for vacating/recalling the order, dated 19.02.2015, which had been passed in I.A. No. 5950 of 2014 and directing the learned Court below to continue to proceed with the Execution Case No. 7 of 2012.

(v) However, by order, dated 07.09.2015, passed in MJC No. 2045 of 2015, the learned single Judge declined to modify/vacate/recall the order, dated 19.02.2015. Consequently, MJC No. 2045 of 2015 was dismissed.

(vi) As against the order, dated 07.09.2015, aforementioned, the decree holders, as appellants, have preferred this Letters Patent Appeal under Clause 10 of the Letters Patent of Patna High Court.

4. The question, therefore, which has arisen for consideration, as indicated above, is: Against the order, dated 07.09.2015, aforementioned passed in the First Appeal, whether a Letters Patent Appeal, under Clause 10 of the Letters Patent of Patna High Court, would lie?

5. For the purpose of clarity, Clause 10 of Letters Patent of Patna High Court is reproduced below:

"10. 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 Patna 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 hereinafter provided."

6. From a bare reading of Clause 10 of Letters Patent of Patna High Court, it becomes abundantly clear that Clause 10 the Patna Letters Patent refers to three classes of appeals that may be heard by a Division Bench, namely, (i) appeals from the judgment of a single Judge in exercise of his original jurisdiction; (ii) appeals from the judgment of a single Judge in first appeals; and (iii) appeals from the judgment of a single Judge in second appeals. [See : **Smt. Asha Devi v. Dukhi Sao and others, reported in AIR 1965 Patna 472 (F.B.)**]

7. With the coming into force on 01.02.1977, Section 100A of the Code of Civil Procedure, which had been inserted by Section 38 of the Act No. 104 of 1976, read as under:

"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 or in any other law for the time being in force, where any appeal from an 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."*

8. From a careful reading of the provisions embodied in Section 100A, it becomes clear that when a Single Judge of



a High Court heard an appeal against an appellate decree or order, no further appeal lied from the judgment, decision or order of such Single Judge in such an appeal or from any decree passed in such an appeal meaning thereby that if a Single Judge of a High Court heard an appeal from an appellate decree or order, no further appeal lied by way of Letters Patent, notwithstanding anything contained in the Letters Patent Appeal of the High Court. To put it a little differently, a Letters Patent Appeal could, therefore, lied under Section 100A (before its amendment in the year 2002) only when a Single Judge heard an appeal arising from an original decree or order. Consequently, against the decision, decree or order of the Single Judge, in such an appeal, arising out of an original decree or order, a Letters Patent Appeal lied.

9. Section 100A came to be amended, with effect from 01.07.2002, by Section 4 of the Code of Civil Procedure (Amendment) Act, 2002. Upon its amendment, which came into effect from 01.07.2002, Section 100A reads as under:

"100-A. 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 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."

10. From a bare reading of the provisions, now, embodied in Section 100A, it becomes abundantly clear that no further appeal would lie from the judgment and decree of a Single Judge irrespective of the fact whether the judgment and decree is in an appeal arising from an original decree or order or whether the appeal arises from an appellate decree or order. In other words, by virtue of amendment of Section 100A with effect from 01.07.2002, no Letters Patent Appeal, now, lies against a decree or order of a Single Judge passed in an appeal arising from an original or appellate decree or order.

11. The *vires* of Section 4 of the Code of Civil Procedure (Amendment) Act, 2002, came to be challenged in the case of **Salem Advocate Bar Association, T.N. v. Union of India**, reported in **(2003) 1 SCC 49**, wherein the Supreme Court held that the Legislature's decision not to allow any further appeal by virtue of Section 100A was within the legislative competence and, therefore, the amendment was correct. The relevant observations of the Supreme Court made in paragraph 15, read as follows:

"15. Section 100-A deals with two types of cases, which are decided by a Single Judge. One is where the Single Judge hears an appeal from an appellate decree or order. The question of there being any further



appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a Single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a Single Judge. In such a case to give a further right of appeal where the amount involved is nominal to a Division Bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-court appeal, even where the value involved is large. In such a case, the High Court by rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100-A."

12. From the above observations made in the case of **Salem Advocate Bar Association** (supra), it becomes clear that there would be no further appeal against a decree or order

made in an appeal by a Single Judge of a High Court irrespective of the fact as to whether the appeal was heard from an original or appellate decree or order.

13. Since Section 100-A survived judicial scrutiny, the next question, which fell for consideration, was whether the provisions of Section 100-A shall have retrospective effect on pending appeals. It was held by the Supreme Court, in **Kamla Devi v. Kushal Kanwar and Another**, reported in **(2006) 13 SCC 295**, that a Letters Patent Appeal, which was filed prior to the coming into force of the Code of Civil Procedure (Amendment) Act, 2002, would be maintainable.

14. Necessarily, therefore, since after the amendment of Section 100A by Section 4 of the Code of Civil Procedure (Amendment) Act, 2002, no Letters Patent Appeal lies against an order passed by a single Judge in an appeal arising from an original or appellate order.

15. Made it clear the Supreme Court, in **Mohd. Saud v. Dr. (Maj.) Sk. Mahfooz**, reported in **(2010) 13 SCC 517**, that the only purpose for introducing Section 100-A was to reduce the number of appeals as the public, at large, were being harassed by many appeals available in the statute. The amendment of Section 100-A was, thus, made to minimize the delay in the finality of the decision by excluding the right to prefer a second appeal in a High Court from the order passed



by a single Judge in an appeal arising from an original or appellate decree or order. The Supreme Court has further clarified, in **Mohd. Saud** (supra), that if Letters Patent Appeal, in question, was held to be maintainable, then, the result would be that against an interlocutory order of a District Judge, there may be two appeals; first, to the Single Judge and, then, to the Division Bench of the High Court; but against a final judgment of the District Judge, there can be only one appeal. (See also, **Municipal Corporation of Brihanmumbai v. State Bank of India**, reported in **(1999) 1 SCC 123**)

16. In no uncertain words, a Constitution Bench of the Supreme Court, in **P. S. Sathappan (Dead) by Lrs. V. Andhra Bank Ltd. And Others (AIR 2004 SC 5152)**, has held, that by Section 100-A, introduced by 2002 Amendment to the Code, a specific exclusion has been contemplated and that by virtue of Section 100-A, no Letters Patent Appeal against original or appellate judgment/decreed/order of a single Judge would, now, be maintainable.

17. In the present case, the expression, *any other law for the time being in force*, appearing in Section 100A of the Code of Civil Procedure, 1908, admittedly, excludes a letters patent appeal. Though the letters patent of a High Court may have given a right to appeal; but, such a right, even if vested by the Letters Patent, may be taken away by the



Legislature and this is what has been done clearly and specifically done with the help of the *non-obstante* clause with which Section 100A starts. In other words, with the help of *non-obstante* clause, Section 100A specifically excludes any other law, which obviously would mean and include the Letters Patent of Patna High Court. [See : **P. S. Sathappan** (supra)].

18. It is no more *res integra* that a right to appeal, even if a vested one, could be taken away by law. Section 100-A (upon its introduction by Section 4 of the Code of Civil Procedure (Amendment) Act, 2002) starts with a non-obstante clause with obvious intention to give it overriding effect in the case of conflict in the laws mentioned with the non-obstante clause. Section 100A, in specific words, prohibits further appeal against decree, judgment or order of a single Judge of a High Court, notwithstanding what is contained in its Letters Patent.

19. Situated thus, it becomes abundantly clear that the Letters Patent, which provides for further appeal to a Division Bench, remains intact; but the right to prefer further appeal is taken away even in respect of matters arising under the specific enactments or the instruments having the force of law, such as, Letters Patent of Patna High Court.

20. We are, therefore, clearly of the view that the present appeal is wholly misconceived and cannot be admitted.

21. In the result and for the reasons discussed above,
this appeal stands dismissed.

22. There shall be no order as to costs.

(I. A. Ansari, ACJ.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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