

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No.119 of 2018

IN

Letters Patent Appeal no.85 of 2013

1.Life Insurance Corporation of India & Ors. ...Applicant

vs.

Pandurang Sakharam Shete.

...Respondent
(Appellant)

with

Letters Patent Appeal no.85 of 2013

in

Writ Petition No.252 of 2013.

Pandurang Sakharam Shete.

...Appellant(orig.petitioner)

vs.

1.Life Insurance Corporation of India & Ors. ...Respondent

(Applicant in Civil Appln)

Mr.A.S.Karwande, for the Appellant in LPA and for Respondent in the Civil Application.

Mr.Akshay A. Shah, for the Respondent-LIC in LPA and for the applicant in the Civil Application..

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.****DATE : 6th August,2018**

P.C.:

1. Heard the learned Counsel for the applicant in the civil application and the learned Counsel for the respondent. The learned Counsel Mr.Karwande appearing for the Respondent--Pandurang in civil application filed affidavit in the Civil Application. The same is taken on record.

2. The Letters Patent Appeal is directed against the order dated 28 January 2003 passed by the learned Single Judge of this Court dismissing Writ Petition No.252 of 2013, thereby upholding the order passed by the City Civil Court and the Estate Officer confirming the order of eviction and the damages. An order was passed by the Estate Officer dated 13 April 2012 under the Public Premises (Eviction of Unauthorized Occupants) Act,1971 which has been upheld by the learned Judge, City Civil Court, Bombay by an order dated 11th October,2012. Both these orders were the subject matter of challenge in Writ Petition No.252 of 2013 before the learned Single Judge. By an order dated 28th January,2013, the learned Single Judge of this Court has rejected the petition.

3. The Letters Patent Appeal was filed in the year 2013 and came to be admitted on 8th March,2013.

4. This Civil Application No.119 of 2018 was filed on 16th July,2018. The learned Counsel for the applicant -LIC submits that in view of the judgment of the Supreme Court in "*Life Insurance Corporation of India Vs. Nandini J.Shah & Ors.*" (AIR 2018 SC 1197), this Letters Patent Appeal which has arisen from an order passed by the learned Single Judge necessarily exercising jurisdiction under Article

227 of the Constitution, is not maintainable and the same be disposed of.

5. We have perused the judgment of the Supreme Court which clearly holds a letters patent appeal to be not maintainable from order passed by the learned Single Judge in an identical situation as in the present case. We may reproduce paragraphs 49, 50, 53, 55, 56 and 57 of the judgment of the Supreme Court which read thus:-

“49. In other words, the Appellate Officer while exercising power under Section 9 of the 1971 Act, does not act as a persona designata but in his capacity as a pre existing judicial authority in the district (being a District Judge or judicial officer possessing essential qualification designated by the District Judge). Being part of the district judiciary, the judge acts as a Court and the order passed by him will be an order of the Subordinate Court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction.

50. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Article 226 and 227 of the Constitution of India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, Bombay City Civil Court at Mumbai) as an Appellate Officer is an order of the Subordinate Court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226. Moreover, on a close scrutiny of the decision of the learned Single Judge of the Bombay High Court dated 14.08.2012 we have no hesitation in taking the view that the true nature and substance of the order of the learned Single Judge was to exercise power under Article 227 of the Constitution of India; and there is no indication of Court having exercised powers under Article 226 of the Constitution of India as such. Indeed, the learned Single Judge has opened the judgment by fairly noting the fact that the writ petition filed by the respondents was under Articles 226 and 227 of the Constitution of India. However, keeping in mind the exposition of this Court in the case of Ram Kishan Fauji (AIR 2017 SC 1535) (supra) wherein it has been explicated that in determining whether an order of learned Single Judge is in exercise of powers under Article 226 or 227 the vital factor is the nature of jurisdiction invoked by a party and the true nature and character of the order passed and

the directions issued by the learned Single Judge. In paragraph 40 of the reported decision, the Court adverting to its earlier decision observed thus:

“40. xxx xxx xxx Whether the learned Single Judge has exercised the jurisdiction Under Article 226 or Under Article 227 or both, would depend upon various aspects. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. It was reiterated that it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction Under Article 226 or 227 of the Constitution or both. The two-Judge Bench further clarified that the Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. The delineation with regard to necessary party not being relevant in the present case, the said aspect need not be adverted to.¶ Again in paragraphs 41 and 42, which may be useful for answering the matter in issue, the Court observed thus:

—41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of civil court can only be challenged Under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.

42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1 An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2 The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation. 42.3 A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge Under Article 227 of the Constitution and determination by the High Court under the said Article and, hence, no intra-court appeal is entertainable. 42.4 The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a

straitjacket formula for the same. (emphasis supplied)

... ..

53. In paragraph 45.2 of the same judgment, the Court authoritatively concluded that an order passed by a Civil Court is amenable to scrutiny of the High Court only in exercise of jurisdiction under Article 227 of the Constitution of India, which is different from Article 226 of the Constitution and as per the pronouncement in *Radhey Shyam* (supra), no writ can be issued against the order passed by the Civil Court and, therefore, no letters patent appeal would be maintainable.

.. ..

55. In other words, the Division Bench of the Bombay High Court ought to have dismissed the Letters Patent Appeal filed by the respondents as not maintainable. In that event, it was not open to the Division Bench to undertake analysis on the merits of the case as has been done in the impugned judgment. That was impermissible and of no avail, being without jurisdiction. Indeed, that will leave the respondents with an adverse decision of the learned Single Judge dismissing their writ petition No.4337 of 2012 vide judgment dated 14.08.2012, whereby the eviction order passed by the Estate Officer dated 05.12.2011 and confirmed by the City Civil Court on 03.04.2012 has been upheld.

56. As we have held that the Division Bench, in the facts of the present case, could not have entertained the Letters Patent Appeal against the judgment of the learned Single Judge, it is not necessary for us to examine the merits of the eviction order passed against the respondents by the Estate Officer and confirmed by the City Civil Court and the Single Judge of the High Court. In any case, that cannot be done in the appeal filed by the owner of the public premises, namely, the appellant. We may, however, to subserve the ends of justice, give liberty to the respondents to challenge the decision of the learned Single Judge by way of appropriate remedy, if so advised. That shall be done within six weeks from today failing which the appellant will be free to proceed in the matter in furtherance of the eviction order passed by the Estate Officer and confirmed right until the High Court, in accordance with law.

57. We once again clarify that we are not expressing any opinion either way on the merits of the eviction order passed by the Estate Officer and the order of the City Civil Court and of the learned Single Judge of the High Court confirming the same. As the preliminary issue regarding the maintainability of the Letters

Patent Appeal has been answered in favour of the appellant, this appeal must succeed.”

6. We find that the principle enunciated in respect of the maintainability, in the judgment of the Supreme Court applies to the subject matter of the Letters Patent Appeal and therefore, the present Letters Patent Appeal is not maintainable. On the ground of maintainability, the Letters Patent Appeal is dismissed.

7. Civil application is accordingly allowed in the above terms.

8. However, it is clarified that Pandurang Sakharam Shete – Appellant in the Letters Patent Appeal is at liberty to resort to an appropriate remedy as permissible in law. All contentions of the parties are kept open.

**Prashant
Vilas Rane**

Digitally signed by
Prashant Vilas Rane
Date: 2018.08.13
18:22:08 +0530

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]