

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

LETTERS PATENT APPEAL NO. 83 OF 2012

IN

WRIT PETITION NO. 11032 OF 2010

The Osmanabad District Central
Co-operative Bank Ltd., Osmanabad,
Through its authorized signatory.

... APPELLANT

VERSUS

1] Anandrao s/o Nagorao Kale,
Age 64 years, Occu. Service,
R/o: Kumbharwada, Near Rajashree Theater,
Omerga, Tq. Omerga, Dist. Osmanabad.

2] The Latur District Central Co-operative
Bank Ltd., Latur, Head Office, Latur,
Through its Managing Director.

... RESPONDENTS

...
Mr. V. J. Dixit, Senior Counsel, i/b Mr. A. N. Nagargoje, for Appellant.

Mr. V. P. Golewar, Advocate for Respondent No.1.

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CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 22nd February, 2019.

ORAL JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed to challenge the decision given by

the learned Single Judge of this Court in Writ Petition No.11032 of 2010 and also the decision given by the Labour Court in IDA No.19 of 2001.

2 Both the sides are heard.

3 The submissions made and record show that for Latur district till the year 1984, there was one District Co-operative Bank. After bifurcation of this district and after creation of new district like Osmanabad, this District Bank came to be divided and one bank came to be created for Osmanabad District. Some employees of old bank were given to new bank. It is the contention of the Appellant Bank, Osmanabad Bank that Respondent No.1 was not given to Osmanabad Bank. Respondent No.1 was already terminated by Latur District Bank on 16th January, 1978.

4 Respondent No.1 had filed proceeding before the Labour Court under the provision of Section 33(C) of the Industrial Disputes Act. This proceeding came to be decided in his favour and the amount came to be determined by the Labour Court. The said

decision was challenged in aforesaid writ petition and the learned Single Judge of this Court has dismissed the said proceeding.

5 Though the point of tenability of the letters patent appeal is involved, the learned counsel for Appellant made submissions on merit also. He submitted that the proceeding under Section 33(C) of the Industrial Disputes Act itself was not tenable. He submitted that the procedure, which is required to be followed to ascertain the amount, was not followed. He submitted that when new bank was created, liability was to be shared to the extent of 41% by Osmanabad Bank, but due to the order made by the Labour Court, the entire liability will have to be borne by the present Appellant and all these circumstances are not considered by the learned Single Judge of this Court.

6 The Labour Court and Industrial Court are under supervisory jurisdiction of this Court. In the present matter, the order was made by the Labour Court and it cannot be disputed that the Labour Court had the jurisdiction to entertain the matter under Section 33(C) of the Industrial Disputes Act. Even if it is presumed that the

order of Labour Court had become final, it needs to be presumed due to supervisory jurisdiction that the order could have been challenged in this Court as the order of a Court subordinate to this Court. In view of these circumstances, this Court could have entertained and decided the matter only under Article 227 of the Constitution of India.

7 The decision of the Apex Court in the case reported as **(2015) 9 Supreme Court Cases 1**, (*Jogendrasinhji Vijaysinhji Vs. State of Gujarat and others*) shows that the letters patent appeal under Clause 15 of the Letters Patent is not available if the matter had come to High Court from Civil Court and in that case the matter can be entertained by the High Court only under Article 227 of the Constitution of Indian. The observations are at paragraph Nos.18 and 30 and they are as follows:

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in *Radhey Shyam*, which is a binding precedent. Needless to emphasise that once it is

exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.

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30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. 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. We reiterate 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 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. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.”

8 In view of the ratio of the Apex Court in the case of *Jogendrasinhji Vijaysinhji Vs. State of Gujarat and others* (supra), even if the Petitioner had mentioned that the proceeding was under Article 226 of the Constitution of India, this Court could not have decided the matter by using jurisdiction under Article 226 of the Constitution of India. Thus, it needs to be presumed that by exercising the jurisdiction under Article 227 of the Constitution of India, the learned Single Judge has decided the matter. The learned Single Judge has decided the matter on merits. In view of the ratio of the aforesaid case, the letters patent appeal will not be tenable. Reference can be made to the Chapter XVII (Rule 18) of the Appellate

Side Rules to show that the Labour Court is to be treated as Court subordinate to the High Court. The appeal stands dismissed.

9 The learned counsel for Appellant requested for stay of four weeks. The stay of four weeks is granted as such interim relief was given by this Court in the past. After that, the amount deposited in this Court is to be paid to Respondent No.1.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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