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

+ **LPA 253/2024 & CM APPL. 18951-18952/2024**

MAHENDER SINGH

..... Appellant

Through: Mr. R.S. Mishra, Mr. Anand Mishra,
Ms. Deepti Mishra and Mr. K.K.
Sharma, Advocates

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Karn Bhardwaj, ASC (GNCTD)
with Mr. Shubham Singh and Mr.
Rajat Gaba, Advocates for R-1

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Date of Decision: 02nd April, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 18951/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 253/2024 & CM APPL. 18952/2024 (for stay)

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the impugned judgment dated 05th February, 2024, passed in FAO No. 523/2018, whereby the learned Single Judge has set aside the judgment dated 26th April, 2018



passed by the learned ADJ, Saket Court, New Delhi ('Trial Court') in Probate Case No. 5972/2016.

2. The Respondent No. 2 i.e., Vijender Singh filed a Probate Case No. 5972/2016 under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the Will dated 04th April, 2007 executed by the mother of the parties i.e., Smt. Lado. The said probate case along with the objections of the Appellant was dismissed by the Trial Court *vide* judgment dated 26th April, 2018.

3. The Respondent No.2 thereafter preferred an appeal under Section 299 of the Indian Succession Act, 1925 against the judgment of the Trial Court, which was allowed by the learned Single Judge of this Court *vide* judgment dated 05th February, 2024 and the impugned judgment of the Trial Court was dismissed. Therefore, the Appellant has preferred the present appeal, challenging the impugned judgment dated 5th February, 2024, of the learned Single Judge.

4. We are of the considered opinion that the present Letters Patent Appeal filed against the judgment of the learned Single Judge of this Court passed in first appeal is not maintainable as the same would amount to a second appeal which is expressly barred by Section 100A of the Code of Civil Procedure, 1908, substituted by Act 22 of 2002. In this regard it would be apposite to refer to the judgment of Full Bench of this Court in ***Avtar Narain Behal v. Subhash Chander Behal***¹, whereby this Court authoritatively held that no Letters Patent Appeal is maintainable is maintainable against the judgment of Single Judge in a first appeal arising

¹ 2008 SCC OnLine Del 1154.



out of a special enactment such as Indian Succession Act, 1925. The relevant paragraph of the said judgment reads as under:

“1. A family dispute and the consequent challenge to the Will dated 19.10.1972 and Codicil dated 25.4.1990 executed by late Shri Gopal Das Belial has given rise to the present proceedings. The respondent filed a petition for grant of probate/letters of administration which came to be allowed by the learned District Judge, Delhi, who by judgment dated 16.10.2003 issued the letters of administration to the respondent. The appellant aggrieved by the same preferred an appeal being FAO No. 420/2003 under Section 299 of the Indian Succession Act, 1925 which was also dismissed by the learned single Judge on 31.03.2008 and the present Letters Patent Appeal has been filed aggrieved by the same order....

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3. In our view, in the light of the submissions made at the Bar, the question referred needs to be reframed. The question is:*

“Whether after insertion of the amended Section 100A in the Code of Civil Procedure a Letters Patent Appeal is maintainable against the judgment rendered by a single Judge in an appeal, arising out of a special enactment like the Indian Succession Act?”

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, preferring a further appeal to a Division Bench against the judgment and 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.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)**.

24. **In the light of the foregoing discussion, we hold that after insertion of Section 100A in the Code of Civil Procedure no Letters Patent Appeal is maintainable against the judgment rendered by a single Judge in a first appeal arising out of a special enactment e.g. Indian Succession Act. The appeal is, therefore, dismissed as not maintainable.**"

(Emphasis supplied)

5. In the judgment of the Supreme Court passed in **Kamal Kumar Dutta and Another vs. Ruby General Hospital Ltd. and Others**², it has been authoritatively held that after the enactment of Section 100-A CPC, with effect from 01st July, 2002, the power of the High Court in exercising the letters patent in a matter where a learned Single Judge has decided the appeal from the original order has been expressly taken away. In the said judgment, the Supreme Court was considering the maintainability of the LPA before the Division Bench against the order passed by the learned Single Judge in an appeal filed under Section 483 of the Companies Act,

² (2006) 7 SCC 613.



1956, against an order passed by the Company Law Board. The relevant paragraphs read as under:

*“22. 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. **Parliament while amending Section 100-A 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 the learned Single Judge to the Division Bench.** Section 100-A of the Code of Civil Procedure reads as follows:*

“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 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.”

*23. **Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn.** The present order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is, an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. The learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100-A. **The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the***



power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.”

(Emphasis supplied)

6. In view of the foregoing, this Letters Patent Appeal is not maintainable and the same is accordingly dismissed along with the pending application, with liberty to the Appellant herein to avail his appropriate remedy under law.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 2, 2024/msh/sk

Click here to check corrigendum, if any