

PETITIONER:
VINITA M. KHANOLKAR

Vs.

RESPONDENT:
PRAGNA M. PAI & ORS.

DATE OF JUDGMENT: 26/11/1997

BENCH:
S.B. MAJMUDAR, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
THE 28TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice S.B. Majmudar
Hon'ble Mr. Justice K. Venkataswami
G.B.Sathe, D.N. Hungod, Advs. for the appellant
D.N. Mishra, Adv. for M/s. J.B.D. & Co., Advs. for the
Respondents.

O R D E R

The following Judgment of the Court was delivered:
Leave granted. We have heard learned counsel for the parties.

The short question is whether an appeal would lie before a Division bench of the High Court against an order of the learned Single Judge rendered by him in proceedings under sec. 6 of the Specific Relief Act, 1960 (hereinafter refer to as 'the act'). Learned Single Judge passed an order dated 15.11.1994 in Suit No. 411/93 decreeing the suit in terms thereof. When an appeal was carried to the Division Bench of the High Court against the said order, it was contended on behalf of the respondents that the appeal was not maintainable in view of sub-sec. (3) of sec. 6 of the Act. The said provision certainly bars any appeal or revision against any order passed by the court under sec. 6 of the Act. To that extent the decision of the Division Bench cannot be found fault with. However, one contention canvassed by learned counsel for the appellant requires closer scrutiny. He submitted that even if an appeal would not lie under sub-sec. (3) of sec. 6 of the act by itself against any order passed by the court under sec. 6 of the Act, this was an order passed by learned Single Judge of the High Court exercising original jurisdiction. Therefore, under clause 15 of the Letters Patent which is a charter under which the High Court of Bombay functioned, the said provision for appeal would not have been whittled down by the statutory provisions of sec. 6(3) of the Act. Clause 15 of the Letters Patent is extracted hereunder:-

"15, Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction, ...And we do further

ordain that an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal 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 a revisional jurisdiction, and not being a sentence or order passed or made in 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 106 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, on or after the first day of February 1929 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."

Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. No such bar is discernible from sec. 6(3) of the act. it could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed.

The judgment and order of the High Court in appeal No. 960/94 are set aside and the appeal is restored to the file of the High Court for being proceeded further in accordance

with law. As the appeal of 1994 is being restored to the file of the High Court, the High Court is requested to decide the appeal as expeditiously as possible.

The appeal is accordingly allowed. No costs. We make it clear that we express no opinion on the merits of the controversy between the parties.

JUDIS