CASE NO.:
Appeal (civil) 7376 of 2003

PETITIONER:
Bolin Chetia

RESPONDENT:
Jogadish Bhuyan & Ors.

DATE OF JUDGMENT: 11/03/2005

BENCH:
CJI R.C. Lahoti & G.P. Mathur

JUDGMENT:
J U D G M E N T

O R D E R

R.C. Lahoti, CJI

In an appeal under Section 116A of the Representation of the People Act, 1951 merely on its being filed, should the respondent be necessarily and in routine put on notice, forgoing the application of judicial mind to the merits of appeal, at that stage? Does this Court not have power to summarily throw out an appeal howsoever worthless it may be? These are the questions which have arisen for decision; thanks to the submission made with vehemence by the learned counsel for appellant.

The appellant was a candidate at the legislative assembly elections in the State of Assam. He lost in the election, as also in the High Court where an election petition filed by him putting in issue the election of the returned candidate has been directed to be dismissed on trial. He has filed the present appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter 'the Act', for short).

When the appeal was placed before the Court, we felt inclined to hear the learned counsel for the appellant on the question of admission, that is, whether the appeal deserved to be admitted for bi-parte hearing. The learned counsel for the appellant resisted the move of the Court and submitted that this appeal is a statutory first appeal and, therefore, it should be admitted for hearing bi-parte as of right and a notice to respondents must issue as a matter of course. In fact, the learned counsel for the appellant went on to the extent of submitting that the appeal need not have been listed before the Court for the purpose of hearing on admission; rather the Registry itself should have directed notice to be issued to the respondents and placed the appeal only soliciting directions in the matter of printing of the paper books, filing of documents, etc. In other words, the learned counsel for the appellant submitted that the only directions which the Court can make at this stage are those which may be necessary for preparing the records to enable a final hearing and no orders are needed for 'admitting' the appeal.

We have heard the learned counsel for the appellant, as also the learned counsel for the respondent (successful candidate) present on caveat.

The relevant statutory provisions contained in the Act are:-

"116A. Appeals to Supreme Court \026 (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under section 98 or section 99.

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under section 98 or section 99:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

116C. Procedure in appeal \026 (1) Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be, apply in relation to such appeal."

xxx xxx xxx xxx"

A bare reading of the above said provisions shows that against every order passed by a High Court under Section 98 or Section 99 an appeal shall lie to the Supreme Court. The hearing is open on any question of law and fact, both. Every such appeal shall be "heard and determined", as nearly as may be, in accordance with the procedure applicable to the first appeals preferred against any final order passed by a High Court in exercise of its original civil jurisdiction. The provisions of the Code of Civil Procedure shall, in case of inconsistency, give way to the provisions contained in the Act and the Rules made thereunder. The Supreme Court Rules additionally apply in relation to such appeals.

The Supreme Court Rules, 1966 framed in exercise of the powers conferred by Article 145 of the Constitution do not provide for the procedure applicable to such appeals. In a book 'Supreme Court Practice and Procedure' by B.R. Aggarwal, we find the following passage (at page 138):-

"No separate rules have been framed by the Supreme Court for filing and hearing appeals under the Representation of the People Act, 1951. The procedure in election appeals

will be the same as in the case of civil appeals.

As soon as election appeals are filed, they are numbered and placed before the Court for preliminary directions. Election Appeals are generally treated as expedited appeals. The Court gives direction regarding preparation of the appeal paper-book. It is generally directed that as soon as the record is ready, the appeals should be placed before the Court for hearing. The rest of the procedure is the same as in the other ordinary appeals. A court-fee of Rs 250 is to be paid on the petition of appeal."

The Registry has also brought to our notice that all statutory appeals, including the appeals under Section 116A of the Act, are placed for hearing on admission before the Court, unless otherwise specifically provided by the Rules. It is also pointed out that there have been several cases in the past where such appeals have been dismissed at the threshold as not admitted and without noticing the respondents.

The word 'appeal' is not found defined either in the Act or in the Code of Civil Procedure, 1908 (hereinafter 'the Code', for short). In its natural and ordinary meaning an appeal is a remedy by which a cause determined by an inferior forum is subjected before a superior forum for the purpose of testing the correctness of the decision given by the inferior forum. The right of appeal is a substantive and valuable right of any appellant who is normally a person aggrieved by the impugned decision. According to sub-rule (1) of Rule 11 of Order 41 of the Code, the appellate court may, after sending for the record, if it thinks fit to do so and after appointing a day for hearing the appellant, dismiss the appeal without sending notice to the court from whose decree the appeal is preferred and without serving notice on the respondent. Though the court does not assign a particular name to the proceedings held on such a date of hearing or such a step in the procedure of hearing the appeal, in judicial circles, it is generally called a 'motion hearing' or 'hearing on admission' or 'preliminary hearing'. Ordinarily a court of appeal, and specially a court of first appeal, would prefer to have the records of the lower court before it. But it is not always necessary. An appeal may raise a question of law alone and the appellate court may form an opinion at the preliminary hearing whether the appeal deserves to be heard bi-parte on that question of law without sending for the record of the lower court. A first appeal is generally open for hearing on questions of law and fact, both, and the appellate court possesses power to make all such orders as the original court could have made. The discretion conferred on the appellate court to dismiss the appeal at its threshold is a judicial discretion and cannot be exercised arbitrarily or by whim or fancy. The appellate courts exercise the discretion in favour of summary dismissal sparingly and only by way of exception. However, that does not tantamount to saying that the appellate court does not possess the power to dismiss an appeal summarily and at the threshold. Such power to summarily dismiss can be exercised, depending on the facts and circumstances of a given case, before issuing notice to the respondent and even before sending for the record of the inferior forum. Similarly, the appellate court possesses power to admit or reject the appeal in its entirety, as also, to admit the appeal in part in regard to a particular part of decree and dismiss it in part if the two parts are severable. Once the appeal is admitted, the appellate court may not, except in very exceptional cases,

restrict any grounds on which the appeal should be heard. Where the appellate court exercises its discretion in favour of dismissing the first appeal without issuance of notice to the respondent, it is expected that the reasons for doing so are placed on record. Such recording of reasons is necessary where the order of summary dismissal is open to challenge before a superior forum. This rule of practice does not apply to the Supreme Court as it is the final Court and as no appeals lie against the decisions of this Court, including a decision by which an appeal is summarily dismissed.

It will be useful to make a reference to a few decided cases spelling out the judicial opinion relevant to the issue at hand.

In Umakant Vishnu Junanarkar Vs. Pramilabai & Anr. (1973) 1 SCC 152, dealing with the power of the first appellate court to summarily dismiss an appeal, the Supreme Court reiterated its earlier view taken in Mahadev Tukaram Vetale & Ors. Vs. Smt. Sugandha & Anr. (1973) 3 SCC 746 and held that an appeal raising triable issues should not be summarily dismissed. Nevertheless, the availability of such power was not denied. The Court noted the query ___ whether in any circumstance, a High Court can dismiss a first appeal summarily without giving reasons, and observed that in the particular circumstances of that case, it was not necessary to consider such larger question. In Shaharulla Mondal Vs. Bangoo Mondal & Ors. 13 C.W.N. 143, the Division Bench emphasized the need for assigning reasons while summarily dismissing an appeal. An appellate court summarily dismissing an appeal, is duty-bound to exercise an independent judgment on the facts of the case and to express (howsoever brief it may be) the result of his investigation in his judgment.

In Jagdis Chandra Das Vs. Chandra Mohan Das AIR 1920 Patna 509, the Division Bench was dealing with a letters patent appeal. The rules of the Court made a provision for the Registrar to satisfy himself that the appeal was within time, sufficiently stamped and complied with the rules, and if so, then to admit the first appeal and issue notice to the respondent and place the appeal before the bench to which such appeals were assigned. Yet, the Court recognized the power of the Bench to call upon the appellant or his pleader, without serving notice on the respondent, if any case was made out for issuing notice to the respondent. It was held that the Court could dismiss the letters patent appeal without calling upon the respondent acting exactly as in cases under Order XLI Rule 11. If the appeal is admitted and the Court, having heard the appellant, desires to hear the respondent before finally disposing of the appeal, it may do so but if the appeal is dismissed, the respondent need not be noticed and heard.

In S.P. Khanna Vs. S.N. Ghosh 1976 Tax L.R. 1740, Section 483 of the Companies Act, 1956 came up for the consideration of the Division Bench of the Bombay High Court. Section 483 provides that the appeals from any order or decision in the matter of the winding up of a company by the Court, shall 'lie' to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. The use of the word 'shall' makes it clear that the right of appeal conferred by the provision is as of right. But, the Division Bench held that an appellate court under Section 483 has authority to hear the appellant on the merits at the admission stage and decide whether the controversy raised in appeal has any prima facie substance or not. The provision does

not put any fetters on the power of the Court to reject worthless appeals at the initial or admission stage and it could not be said that mere institution of the appeal would tantamount to its admission and must go for final hearing. The provision provides clearly for a remedy and is not intended to limit or control the exercise of the powers of the Court, and hence, appeal under Section 483 has to be treated and proceeded with like any other civil appeal. The power of the appellate court exercisable at the stage of admission of the appeal to dismiss a non-deserving appeal, not fit one to go for final hearing, is not taken away.

Reference was made by the Bombay High Court to M/s. Golcha Investment (P) Ltd. Vs. Shanti Chandra Bafna (1970) 3 SCC 65, wherein while interpreting Chapter XLII of the Bombay High Court Rules (Rules 965, 966, 966A thereof), this Court has observed that such of the appeals as are not required to be placed for admission are entitled to be admitted as a matter of course. The decision was explained by the Division Bench of the Bombay High Court. We are inclined to extract and reproduce the following passages from the judgment of the Bombay High Court in S.P. Khanna's case (supra) :

"In the constitution of such appeal and its procedure, the stage of admission, like the one of final hearing after issue of notice, appears to us as inherent. Matters are placed for admission with a view to enable the Court to apply its mind to controversy and to find out whether the order questioned calls for reconsideration by the higher Court. This is usually done by giving hearing to the party-appellant. It is implicit that at that stage the Court may adjudicate by finding against the petitioning appellant and upholding the order impugned. Such adjudication at the stage of admission of appeal is part of the jurisdiction of the appellate Court and we have doubt whether that jurisdiction could be affected if it is explicitly granted by the statute by framing a rule of procedure. Placing the matters for admission before the Court are not mere matters of procedure but also involve exercise of judicial authority by the appellate Court. Normally, if the authority is conferred by the statute, we would be loathe to hold that its effectiveness would stand curtailed by any procedural rule disabling the Court, of its power of hearing the appeal and pronouncing at the stage of admission about the merits of the appeal by finding out whether the same deserves further consideration by the Court.

All this process involved in "admission" has clear juridical efficacy and recognition. It subserves the dynamics to have a speedy and sure disposal of matters brought before the higher forums in the judicial hierarchy. The Code of Civil Procedure permits expressly the rejection of appeals at admission stage by enacting provision like Order XLI, R. 11, C.P. Code. Even without such a provision, we would think that it would be inbuilt (sic) (inbred) in the appellate jurisdiction enabling the Court to hear the appellant as to the matter brought before it and reject the appeal

which may prima facie have no merit or may suffer from the defects of untenability, limitation as well of incompetency. This stage, which is treated as admission stage of an appeal, appears to protect the litigation from waste of costs as well of public and private time. That can effectively check meritless and vexatious litigations. All these considerations must be kept in view while considering the form of appeal provided by statute. Provisions of Section 483 and the appeal thereunder cannot be treated as an exception and as erasing out all these juridical as well as judicious considerations inherent in the admission stage of an appeal. We can well observe that the stage of admission of appeals in Company matters is neither superfluous nor unnecessary. In fact that posits serious exercise of appellate authority full of judicial consequences. Unless there is something expressly dispensing with that stage, it would be neither just nor proper to hold that in the appeals under Section 483 there cannot be a hearing at the admission stage. We have already indicated that what was observed in M/s. Golcha's case AIR 1970 SC 1350 (supra) was with reference to the rule of this Court and nothing more. That observation cannot further be strained or logically extended as laying down that in an appeal under Section 483 of the Act the appellate Court is powerless at the stage of admission to find out the merit of the appeal or is disabled from rejecting it though it may be worthless. It is well settled that possible logical extensions from the ratio of a judgment surely are not part of the ratio itself and it is hazardous to apply precedents in that manner."

We agree with this statement of law.

In Kiranmal Zumerlal Borana Marwadi v. Dnyanoba Bajirao Khot and others (1983) 4 SCC 223, this Court has not countenanced the practice of the High Court dismissing the appeal by one word order 'dismissed' if numerous and serious questions, both of law and facts were raised in the appeal.

It is thus clear that the appellate courts including the High Court do have power to dismiss an appeal summarily. Such power is inherent in appellate jurisdiction. The power to dismiss summarily is available to be exercised in regard to first appeals subject to the caution that such power will be exercised by way of exception and if only the first appellate court is convinced that the appeal is so worthless, raising no arguable question of fact or of law, as it would be a sheer wastage of time and money for the respondent being called upon to appear, and would also be an exercise in futility for the Court. The first appellate court exercising power to dismiss the appeals summarily ought to pass a speaking order making it precise that it did go into the pleas \026 of fact and/or law \026 sought to be urged before it and upon deliberating on them found them to be devoid of any merit or substance and giving brief reasons. This is necessary to satisfy any superior jurisdiction to whom the aggrieved appellant may approach that the power to summarily dismiss the appeal was exercised judicially and consciously by way of an exception.

Shri S.K. Jain, learned counsel for the appellant has placed forceful reliance on rule 5A of Order XV of the Supreme Court Rules, 1966. The rule 5A catalogues three types of appeals which "on being registered shall be put up for hearing ex-parte before the Court which may either dismiss it summarily or direct issue of notice\005\005". He submitted that the rule makes a specific provision for the listing of only certain categories of appeals for preliminary hearing before the Court and in that list the appeal under Section 116A of the Act is not mentioned and therefore, the applicability of M/s. Golcha Investments (P) Ltd. case (supra) is squarely attracted which holds that the appeals, other than those mentioned as required to be listed for admission, cannot be so listed. In our opinion, the submission suffers from a fallacy. Rule 5A relied on by Shri Jain is not applicable here as it finds mention in Part II, Order XV of the Rules, the title whereof reads as under:

"PART II
APPELLATE JURISDICTION
(A) Civil Appeals
ORDER XV
APPEALS ON CERTIFICATE BY HIGH COURT"

This rule 5A has been inserted in Part II of Order XV dealing with appeals on certificate by High Court. Rule 5A cannot be interpreted as dealing with all types of statutory appeals filed before this Court. On the contrary, we find that there are separate provisions contained in the Supreme Court Rules dealing with statutory appeals viz. Order XX-A \026 Appeals under Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), Order XX-B \026 Appeals under clause (b) of Section 130-E of the Customs Act, 1962 (52 of 1962) and Section 35-L of the Central Excise and Salt Act, 1944 (1 of 1944), Order XX-C \026 Appeals under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, Order XX-D \026 Appeals under Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, Order XX-E \026 Appeals under Section 17 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Order XX-F \026 Appeals under Section 23 of the Consumer Protection Act, 1986 (68 of 1986). It is noticeable that the appeals dealt with by Order XX-A, XX-B and XX-F are required, on being registered, to be listed before the Court for hearing ex-parte whereupon the appeal can be dismissed summarily. So is the case of the special leave petitions including those in criminal proceedings and criminal appeals. In Chapters XX-C, XX-D and XX-E, there is a specific provision for the petition of appeal being registered and numbered as soon as found in order whereafter the Registry itself shall issue notice of lodgment of appeal to the respondents. If only Rules had been framed governing the procedure for hearing of appeals under Section 116A of the Act, the Court could have made a specific provision for either the Registry issuing notice of lodgment of appeal to the respondents without hearing ex-parte or for the appeal being placed for preliminary hearing. In M/s. Golcha Investments (P) Ltd. case (supra), the observations contained in para 7 are based on the inference drawn by this Court on reading of the Bombay High Court Rules that excepting the appeals which were specifically provided for being placed for admission in the Court, others were not to be placed for admission. The submission made by the learned counsel for the appellant has, therefore, no merit.

It was next submitted that vires of Order XXI Rule 15(1)(c) of the Supreme Court Rules and also Section 384 of the Criminal Procedure Code, 1973 were put in issue in Sita Ram and

others Vs. State of Uttar Pradesh (1979) 2 SCC 656. The Court upheld the constitutional validity of the impugned provisions and observed that it was reasonable to hold that before hearing the appeal under Rule 15(1)(c) of Order XXI, ordinarily the records are sent for. Here again, it is clear that the Court was dealing with criminal appeals and in that context made the observation that a single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the Constitution that men are fallible and so in such cases, a full dressed hearing of an appeal was an integral part of fundamental fairness or procedure. Therefore, the Court held that (i) under the said Rule 15(1)(c), ordinarily the records are sent for and are available; (ii) in the common run of cases, the Court must issue notice to the opposite party and afford a hearing in the presence of both and with the records on hand; (iii) reasons be recorded in the ultimate order. However, the Court has also held that every right of appeal does not carry with it all the right of getting the record, hearing both sides and giving full reasons for decision. A few illustrative cases to which ex-parte summary procedure will still apply are : "Where the only ground urged is a point of law which has been squarely covered by a ruling of this Court to keep the appeal lingering longer is survival after death. Where the accused has pleaded guilty of murder and the High Court, on the evidence, is satisfied with the pleas and has awarded the lesser penalty, a mere appeal ex misericordia is an exercise in futility. Where a minor procedural irregularity, clearly curable under the Code, is all that the appellant has to urge, the full panoply of an appellate bearing is an act of supererogation. Where the grounds, taken at their face value, are frivolous, vexatious, malicious, wholly dilatory or blatantly mendacious, the prolongation of an appeal is a premium on abuse of the process of court." Krishna Iyer, J speaking for the Court said that the preceding list was not exhaustive. 'May be other cases can be conceived of', but the illustrations only indicate 'the functional relevance of Order XXI, Rule 15(1)(c)'. The distinction between an appeal as of right and by leave was so formulated : in former case, the rule is \026 'notice, records and reasons' but the exception is (and this exception does exist) 'preliminary hearing on all such materials as may be placed by the appellant and brief grounds for dismissal'. This exceptional category occurs where, in all conscience, there is no point at all. In cases of real doubt the benefit of doubt goes to the appellant and notice goes to the adversary \026 even if the chances of allowance of the appeal be not bright (para 55). This Court held that a provision in the Rules dispensing with the need of listing for preliminary hearing "enables, not obligates. It operates in certain situations, not in every appeal. It merely removes an apprehended disability of the court in summarily dismissing a glaring case where its compulsive continuance, dragging the opposite party, calling up prolix records and expanding on the reasons for the decision, will stall the work of the court (which is an institutional injury to social justice) with no gain to anyone, including the appellant to keep whom in agonising suspense for long is itself an injustice." (para 49). In case of appeal by leave, the discretion of Court, judicially exerciseable, comes into play.

Suffice it to observe that Sitaram & Ors. case itself deprives the submission made by Shri S.K. Jain, the learned counsel for the appellant, of all its force and charm.

The power to summarily dismiss a first appeal, even if the appeal is statutory and filed as of right must be held to be inherent and so vesting in this Court as one of necessity. The Constitution Bench decision of this Court in Union of India and

Another Vs. Raghubir Singh (Dead) by LRs. etc. (1989) 2 SCC 754 is, in this context, quite instructive. Chief Justice R.S. Pathak speaking for the Court noticed the volume of work demanding the attention of the Supreme Court of India which made it necessary as a general rule of practice and convenience for the Court to sit in divisions rather than the Court as a whole in the interest of promoting certainty and consistency in judicial decisions. The volume of work has gradually increased. It is the justice oriented approach of this Court, developed by tradition and convention and in its craving to come up to the expectations of 'We, the people of India' that the Court has at times exercised its jurisdiction for redeeming injustice even in individual cases though the Court was expected by the Constitution makers to be a federal court concentrating only on resolution of constitutional issues. This has resulted in adding to its arrears of cases in spite of ceaselessly working for deciding the cases, as fast as it can, and carefully avoiding the two extremes, namely 'justice delayed' and 'justice hurried'. At times, the Court has been criticized for being too liberal in entertaining the cases and adding to the pendency of dockets before it. It is, therefore, all the more necessary that worthless cases, wholly devoid of any merit, ought to be checked at the entry point itself. Litigation is a costly affair. In an appeal, where even in the absence of the opponent, the appellant fails to convince the Court that any arguable question, either of fact or of law, is involved in the case, we fail to understand how the appellant can still urge that the respondent should be noticed to appear before this Court and incur huge expenditure in terms of money, time and energy and add to the number of pending matters ___ an addition, which on appearance of the respondent, would be sure to be simply struck down.

In Surinder Singh Vs. Hardial Singh and others (1985) 1 SCC 91, it has been held that an appeal to this Court under Section 116A of the Act, read with Section 116C, has to be treated as a civil appeal and the jurisdiction to be exercised is as extensive as in the case of an appeal from a matter disposed of in exercise of original civil jurisdiction of the High Court. In an appeal laid before this Court, whether under any statute conferring a right of appeal or as a result of grant of leave under Article 136 of the Constitution what opens up to be exercised is the normal civil appellate jurisdiction of the Court. These observations were made in the context that this Court would not ordinarily interfere with the findings of facts reached by the trial judge. Ordinarily a finding reached on assessment of evidence, particularly when it is oral, would not be interfered with in appeal; though on being satisfied of a wrong approach of the trial court or injustice shown to have been done, this Court would not only have power, rather it would be its obligation, to rectify the mistake and dispense justice.
We are, therefore, clearly of the opinion that though an appeal under Section 116A of the Act is preferred as of right, yet the inherent power of this Court to summarily dismiss the appeal at the admission stage is not taken away. We hasten to add that such power would be exercised only by way of exception such as, on the Court feeling convinced that the appeal does not raise any such question of fact or law as would persuade this Court to put the respondent on notice before hearing.

The submission forcefully urged by the learned counsel for the appellant is rejected. Let the appeal be placed for preliminary hearing (i.e. hearing on admission) before the Court.