

Bombay High Court

Employees State Insurance ... vs H.Fillunger & Co.Pvt.Ltd on 1 September, 2008

Bench: B.H. Marlapalle, D.B.Bhosale

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE  
Letters Patent Appeal Stamp No.15833 of 2005  
In

First Appeal No. 696 of 2001

Employees State Insurance Corporation Appellants

Vs.

H.Fillunger & Co.Pvt.Ltd.

Mr.M.V.Jaykar i/b.M/s.M.V.Jaykar & Co.for appellants.

Mr.C.R.Naidu i/b.M/s.C.R.Naidu & Co. for respondent.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE, JJ.

Reserved on : August 21, 2008.

Pronounced on : September 01, 2008

ORDER (PER B.H.MARLAPALLE, J.) :

1. This Letters Patent Appeal is directed against the order passed by the learned Single Judge of this Court on 22/2/2005 thereby allowing First Appeal No.696 of 2001. In the said First Appeal filed by the present respondent - company, the judgment and order of the Employees' Insurance Court at Pune rendered on 4/5/2001 was under challenge and the learned Judge of the Employees'

Insurance Court was pleased to dismiss Application (ESI) No.18 of 1993 filed under Section 75 of the Employees' State Insurance Act, 1948 ("the ESI Act" for short). It appears that the Sub-Regional office of the appellant

- Corporation at Pune had by its letter dated 17/8/1993 informed the company regarding the coverage of its establishment under the provisions of the ESI Act commencing from 27/11/1976 and the said decision of the Corporation was upheld by the Employees' Insurance Court at Pune. When First Appeal No.696 of 2001 was decided by the learned Single Judge of this Court on 22/2/2005, none had appeared for the appellant - Corporation but the appeal was allowed on merits by a reasoned order, which is under challenge in this LPA.

2. We had called upon the learned counsel for the Corporation to address us on the preliminary point of maintainability of this Letters Patent Appeal and we have heard at length the learned counsel for the respective parties on this preliminary issue.

Mr.Jaykar, learned counsel for the appellants submitted that the Employees' Insurance Court constituted under the ESI Act is not a Civil Court and, therefore, First Appeal No.696 of 2001 filed under Section 82 of the said Act cannot be treated on par with the First Appeal filed under Section 96 of the Code of Civil Procedure and consequently the bar of entertaining the Letters Patent Appeal as provided under Section 100-A as incorporated in the CPC from 1/7/2002 will not be attracted. As per Mr.Jaykar First Appeal No.696 of 2001 was filed under a special statute viz. the ESI Act and so long as there is no express bar from filing any further appeal under the said Act, the Letters Patent Appeal will be maintainable. In support of these submissions he has placed reliance on the Constitution Bench decision in the case of P.S.Sathappan (Dead) by LRs Vs. Andhra Bank Ltd. & ors. [AIR 2004 SC 5152] as well as the Full Bench decision of this Court in the case of Rahul Sharad Awasthi Vs. Ratnakar Trimbak Pandit & ors. [2004 (5) Bom. C.R. 50].

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3. Mr. Naidu, learned counsel for the respondent - company, on the other hand, urged before us that the LPA is not maintainable as it has been filed against an order passed on 22/2/2005 i.e. after 1/7/2002 and the bar provided under Section 100-A of CPC shall be applicable. As per him the Employees' Insurance Court has all the trappings of a Court and more particularly of a civil court. He placed reliance on the decision in the case of Kamal Kumar Dutta v. Ruby General Hospital Ltd. [(2006) 7 SCC 613].

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4. In the case of Rahul Awasthi (Supra), the Full Bench of this Court did not deal with the issue of applicability of Section 100-A of CPC to the judgment and order of a Single Judge of the High Court in exercise of the appellate jurisdiction under a special statute. The Full Bench stated in this regard as under:

"We clarify that we are not concerned with the question whether section 100-A of the Code as substituted by the Amendment Act, 2002 is applicable to the appeal before the Division Bench against the judgment and order of a Single Judge of the High Court in exercise of appellate jurisdiction under special statute and to that extent we do not express any opinion about the Full Bench decision of Andhra Pradesh High Court and the Division Bench decision of this Court in Bhenoy G. Dembla...."

5. In the case of P.S. Sathappan (Supra), the Constitution Bench (majority view) held that in view of the language of Section 104 (1) of the C.P.C., the Letters Patent Appeal would be maintainable against the order passed by the Single Judge of the High Court in an Appeal From Order. The Supreme Court referred to its earlier decision in the case of Union of India vs. Mohindra Supply Co. [(1962) 3 SCR 497], 497] wherein the following observations are made:-

"The intention of the legislature in enacting subsection (1) of Section 104 is clear: the right to appeal conferred by any other law for the time being in force is expressly preserved.

This intention is emphasized by Section 4 which provides that in the absence of any specific provision to the contrary, nothing in the Code is intended to limit or otherwise affect any special jurisdiction or power conferred by or under any other law for the time being in force. The right to appeal against judgments (which did not amount to decrees) under the Letters Patent, was therefore not affected by Section 104(1) of the Code of Civil Procedure, 1908."

. In Sathappan's case, their Lordships stated, ".....As seen above, Section 104(1) specifically saves a Letters Patent Appeal.

Sub-Clause (2) can thus only apply to such appeals as are not saved by Sub-Clause (1).

In other words Sub-clause (2) of Section 104 can have no application to appeals saved by Section 104(1). Also it is well established rule of interpretation that if one interpretation leads to a conflict whereas another interpretation leads to a harmonious reading of the section, then an interpretation which leads to a harmonious reading must be adopted. In the guise of giving a purposive interpretation one cannot interpret a section in a manner which would lead to a conflict between two sub-sections of the same section....."

It is, therefore, clear that the decision in the case of Sathappan (Supra) is based on the language of Section 104 of C.P.C. and the said decision cannot be made applicable to the instant case.

6. To decide the preliminary issue, we need to deliberate on the following issues:-

(a) Whether the Letters Patent Appeal, against the judgment in the first appeal arising from the decision of ESI court, is maintainable in view of the amended Section 100-A of C.P.C.

as brought into force from 1/7/2002?

(b) Whether the Letters Patent Appeal is maintainable as the ESI Act does not expressly confer and recognise such a right of appeal before the Division Bench?

(c) Whether, in view of the Scheme of Section 82 of the ESI Act, the Letters Patent Appeal is impliedly barred?

7. It would be appropriate to consider the scheme of Chapter VI of the ESI Act i.e. from Section 74 to Section 83. As per Section 74 the State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local areas as may be specified in the notification.

The Court shall consist of such number of Judges as the State Government may think fit. A person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

Section 75 specifies the matters  
Employees' Insurance Court.

of Section 75, no Civil

to decide or deal with any

out in sub-sections (1) and

any liability which by or

decided by a medical board,

tribunal or by the

Section 76 deals with the

the Employees' Insurance Court

Government to transfer any

Employees ' Insurance Court in  
Court in another State with

Government of that State and  
matter is so transferred,  
proceedings as if they had

in it. As per Section 77  
Employees ' Insurance Court shall  
application and every such

within a period of three years from  
the cause of action arose.

presented shall be in such form  
such particulars and shall be accomp

fees, if any, as may be prescribed  
by the State Government in cons

Corporation. Sections 78, 79, 81 and 82 of the ESI Act read as under:

"78.

78. Powers of Employees' Insurance Court - (1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such court shall be deemed to be a Civil Court within the meaning of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the court.

(4) An order of the Employees' Insurance Court shall be enforceable as if passed in a suit by

ig 79. Appearance by legal  
- Any application, appearance  
to be made or done by any  
an Employees' Insurance Court

appearance of a person  
purpose of his examination as  
be made or done by a legal  
an officer or a registered  
authorized in writing by such  
the permission of the court,  
person so

81. Reference to High Court.  
Insurance Court may submit any  
for the decision of the High

does so shall decide the  
before it in accordance

82. Appeal - (1) Save

in this section, no appeal  
order of an Employees'

(2) An appeal shall lie to  
an order of an Employees'

it involves a substantial

ig (3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this section."

8. In the State of Maharashtra, the State Government has issued notifications appointing the Industrial Courts / Tribunals established under the Industrial Disputes Act, 1947, the Bombay Industrial Relations Act, 1946 and the MRTU & PULP Act, 1971 as the Employees' Insurance Courts. As per Rule 5 of the Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rules, 1999, the mode of appointment of the Member -

Industrial Court shall be:

(a) by promotion, on the recommendation of the High Court of a suitable Judge of the Labour Court who has worked for not less than five years;

ig (b) by nomination, on the recommendation of the Selection Committee, of a person who is not less than 35 years of age and unless already in the Judicial service is not more than 50 years of age and has practised as an advocate in the High Court or any courts subordinate to it, for not less than ten years;

(c) by transfer of suitable District Judge.

. In short the Presiding Officers of the Industrial Court / Employees' Insurance Court are the Judicial Officers in the cadres of District Judge and undoubtedly they are members of the Judicial Service within the meaning of Article 236(b) of the Constitution as has been held by the Apex Court



in the case of State of Maharashtra v. Labour Law Practitioners' Association & ors. [AIR 1998 SC 1233].

1233]

9. In the case of Bhenoy G. Dembla and anr. vs. M/s. Prem Kutir P. Ltd. [2003(4) Mh.L.J. 883], 883] a Division Bench of this court held that no Letters Patent Appeal would lie against the decision rendered by the Single Judge in a First Appeal filed under Section 10F of the Companies Act, 1956 challenging the decision rendered by the Company Law Board.

Whereas, another Division Bench of this court, in the case of Maharashtra Power Development Corporation Ltd. vs. Dabhol Power Co. and ors. [AIR 2004 Bombay 38] held that the Company Court exercising jurisdiction under Section 10F of the Companies Act, 1956 does not sit in appeal from original decree and order and, therefore, the order passed in an appeal filed under Section 10F by the Single Judge is not a judgment and decree within the meaning of the Civil Procedure Code. Consequently, the Letters Patent Appeal was held to be maintainable. However, the said decision has been overruled by the Supreme Court in the case of Kamal Kumar Datta (Supra).

. In para 21, 22 and 23 of its decision in Kamal Kumar Datta's case, the Supreme Court observed as under:-

21. But after the amendment the power which was being exercised under Sections 397 and 398 of the Act by the learned Single Judge of the High Court is being exercised by CLB under Section 10-E of the Act. Appeal against the order passed by CLB, lies to the High Court under Section 10F of the Act.

Therefore, the position which was obtaining prior to the amendment in 1991 was that from any order passed by the Single Judge exercising the power under Sections 397 and 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment the power has been given to CLB and appeal has been provided under Section 10-F of the Act. Thus, Part I-A was inserted by the amendment with effect from 1-1-1964. But the constitution of the Company Law Board and the power to decide application under Section 397 and 398 of the Act was given to CLB with effect from 31-5-1991 and appeal was provided under Section 10-F of the Act with effect from 31-5-1991. Therefore, on reading of Sections 10-E, 10-F, 397 and 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 and 398 of the Act shall be dealt with by CLB and the order of CLB is appealable under Section 10-F of the Act before the High Court.

No further appeal has been provided against the order of the learned Single Judge. Mr. Nariman, learned Senior Counsel for the respondents submitted that an appeal is a vested right and, therefore, under clause 15 of the Letters Patent of the Calcutta High Court, the appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the order of the learned Single Judge under the Act. In this connection, learned counsel invited our attention to a decision of this Court in Garikapatti Veeraya v. N.Subbiah Choudhry and in that it has been pointed out that the appeal is vested right. The majority took the view that the appeal is a vested right. It was

held as follows: (SCR p.488) "...that the contention of the applicant was well founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

ig . The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment, either expressly or by necessary intendment."

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.

10. It has been held that when the Company Law Board exercised its powers under Sections 397 and 398 of the Companies Act, it exercised its quasi-judicial power as original authority and though it may not be a court but it had all the trapping of a court.

Against such order, passed by the CLB, an appeal lies to the learned Single Judge of the High Court under Section 10-F and thereafter no further appeal could be filed, as Parliament in its wisdom has taken away its power under Section 100-A of C.P.C.

11. In the instant case, Employees' Insurance Court is presided over by a Member of the Judicial service within the meaning of Article 236(b) of the Constitution and while dealing with an application under Section 75 of the ESI Act, it exercises judicial powers and it is a court. Against the order passed by the Employees' Insurance Court, an appeal lies before this court under Section 82 of the ESI Act and if it is decided by a Single Bench, Section 100-A would certainly bar any further appeal before the Division Bench, notwithstanding Clause 15 of the Letters Patent Appeal Code. The law laid down in Kamal Kumar Datta's case (Supra) is applicable to the instant case and, therefore, in view of the bar provided under Section 100-A of C.P.C., this Letters Patent Appeal cannot be entertained. In the case of Bhenoy Dembla (Supra), the Division Bench held, "12. The principle of law which emerges is that unless a special statute expressly confers and recognizes a right of appeal before the Division Bench against the judgement and order of a single judge of the High Court in the exercise of the appellate jurisdiction, no such appeal would lie upon the enforcement of the amended provisions of section 100A against a judgment of the Single Judge rendered on and from 1st July, 2002. In other words, where the decision of the Single Judge in the exercise of the appellate jurisdiction, against an original or appellate decree is rendered on and after 1st July, 2002 no further appeal, would lie unless the special statute in question expressly recognize a further right of appeal to the Division Bench."

12. A Full Bench of this court in the case of Gangwani & Co. vs. Mrs. Saraswati w/o Maniram Banewar & ors. [2001 (3) ALL MR 370] had considered the scheme of Section 30 of the Workmen's Compensation Act, 1923.

. The first proviso below subsection (1) of Section 30 of the Workmen's Compensation Act states that no appeal shall lie against any order unless a substantial question of law is involved in the appeal

and the said proviso is in para materia with Section 82(2) of the ESI Act and, therefore, it is relevant to reproduce the following observations of the Full Bench in the case of Gangwani & Co. (Supra):-

"33. Though Section 30 of the Workmen's Compensation Act provides appeal against the order passed by the Commissioner, however, all the orders passed by the Commissioner are not appealable and the jurisdiction of the Appellate Court under this Section is limited one and can be exercised when there is a substantial question of law involved in the matter. The High Court will not interfere with the findings arrived at by the Commissioner when the same are not vitiated by substantial error of law. In this context, it appears that at the most appellate remedy provided under Section 30 of the Workmen's Compensation Act can be equated for the limited purpose with that under Section 100 of Code of Civil Procedure since in both these cases, interference by the High Court is possible only if there is a substantial question of law involved and not otherwise.

Section 100-A of the Code of Civil Procedure puts an embargo on any further appeal under Letters Patent against an appellate judgment rendered by the Single Judge of the High Court. The object is to minimise delay and give finality to the adjudication. Section 100-A is inserted by the Amending Act of 1976 and after enforcement of Section 100-A, no appeal would be available from the judgment, decree or order of Single Judge in second appeal. Though the decision given by the Single Judge of the High Court in appeal under Section 30 of the Workmen's Compensation Act, in the circumstances of the case, is not a judgment as envisaged in Clause 15 of the Letters Patent (Bombay), however, even if we presume it to be so, even then the decision given by the Single Judge under Section 30 of the Workmen's Compensation Act will have same effect as that of the decision rendered by the Single Judge in second appeal and in view of Section 100-A of the Code of Civil Procedure, Letters Patent Appeal against such decision of the Single Judge will not be maintainable.

The view expressed by us is also consistent with the aims and objects of the Workmen's Compensation Act."

13. We, therefore, hold that Section 100-A of the CPC as amended with effect from 1/7/2002 is applicable in the instant case and the Letters Patent Appeal is not maintainable on this count. In addition, the observations made by the Full Bench in the case of Gangawani & Co. (Supra) as reproduced hereinabove are also applicable in the instant case, having regards to the scheme of Section 30 of the Workmen's Compensation Act and Section 82(2) of the ESI Act, and on the same analogy the instant Letters Patent Appeal is not maintainable. Hence this appeal is dismissed in limine as not maintainable.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)