2023:DHC:6352-DB

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

%   **Order reserved on: 21 August 2023**
Order pronounced on: 06 September 2023

\+   LPA 136/2023 and CM APPL. 8810/2023(Stay) and CM APPL. 8811/2023(Summoning of Complete Record) and CM APPL. 8813/2023(Addl. Document) and CM APPL. 14104/2023 (Addl. Document)

PROMOSHIRT SM SA ..... Appellant
Through: Mr. Chander M. Lall, Sr. Adv. with Ms. Swathi Sukumar, Mr. Essenese Obhan, Mr. Ritik Raghuvansh, Mr. Pratyush Rao, Mr. Naveen Nagarjuna, Ms. Ayesha, Ms. Amira Dhawan Advs.

versus

ARMASSUISSE AND ANOTHER ..... Respondents
Through: Mr. Pravin Anand, Mr. Shrawan Chopra, Ms. Madhu Rewaria, Ms. Shree Mishra, Mr. Achyut Tewari and Ms. S. Singh, Advs. for R-1.

\+   LPA 137/2023 and CM APPL. 8825/2023(Stay)

PROMOSHIRT SM SA. ..... Appellant
Through: Mr. Chander M. Lall, Sr. Adv. with Ms. Swathi Sukumar, Mr. Essenese Obhan, Mr. Ritik Raghuvansh, Mr. Pratyush Rao, Mr. Naveen Nagarjuna, Ms. Ayesha, Ms. Amira Dhawan Advs.

versus

ARMASUISSE AND ANR. ..... Respondents

Through: Mr. Pravin Anand, Mr. Shrawan Chopra, Ms. Madhu Rewaria, Ms. Shree Mishra, Mr. Achyut Tewari and Ms. S. Singh, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

YASHWANT VARMA, J.

1. The present **Letters Patent Appeals**[1] have been preferred assailing the judgment dated 04 January 2023 handed down by the learned Single Judge. The aforesaid decision has undisputedly been rendered on appeals which had been preferred against the order dated 25 July 2022 of the Deputy Registrar of Trade Marks, in terms of which the notice of opposition filed by Armasuisse came to be rejected and the applications for registration of trademarks as made by Promoshirt SM SA, were directed to be accepted and processed further for registration under the provisions of the **Trade Marks Act, 1999**[2]. The jurisdiction of the learned Single Judge was invoked in terms of Section 91 of the 1999 TM Act, which contemplates an

[1] LPAs
[2] 1999 TM Act

appeal being preferred to the High Court against an order or decision of the Registrar made under the 1999 TM Act.

2. The respondents have taken a preliminary objection to the maintainability of the instant LPAs asserting that the same would not be maintainable in light of Section 100-A of the **Code of Civil Procedure, 1908**[3]. Section 100-A which was originally introduced in 1976 and as it stands presently is extracted hereinbelow in tabular form: -

Code of Civil Procedure (Amendment) Act 104 of 1976	**Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999)**	**Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002)**
[100A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal.**]**	**10. Substitution of new section for Section 100-A**.—For Section 100-A of the principal Act, the following section shall be *substituted*, namely:— "**100-A.** ***No further appeal in certain cases.***— Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force,— (a) where any appeal from an original or appellate decree or	**4. Substitution of new section for Section 100-A**.—For Section 100-A of the principal Act [as substituted by Section 10 of the Civil Procedure Code (Amendment) Act, 1999 (46 of 1999)], the following section shall be *substituted*, namely:— "**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

[3] the Code

	order is heard and decided, (b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution, by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge.”	Court, no further appeal shall lie from the judgment and decree of such Single Judge.”.

3. Mr. Anand, learned counsel addressing submissions on behalf of the respondent no.1, has submitted that in terms of Section 100A of the Code, since the learned Single Judge was exercising appellate jurisdiction, no further appeal would lie in light of the unambiguous language of the aforenoted provision. Mr. Anand submitted that Section 100-A of the Code, in terms of its’ express language is ordained to override anything to the contrary contained in any Letters Patent of any High Court or for that matter any instrument having the force of law or any other law for the time being in force. It was his submission that Section 100-A of the Code, would bar all further intra-court appeals arising from orders or judgments rendered by a Single Judge while exercising appellate jurisdiction. It was submitted that Section 100-A of the Code, embodies the legislative intent of minimizing the sphere of appeals and to thus eclipse any right that may have otherwise been available by virtue of a Letters Patent.

4. Mr. Anand further drew our attention to the fact that Section 109(5) of the **Trade and Merchandise Marks Act, 1958**[4] had a provision for a further appeal being taken against a judgment or order rendered by a Single Judge. Learned counsel laid emphasis on the fact that in contrast to the above, the present enactment does not construct any such right. It was submitted that the absence of a provision akin to Section 109(5) of the 1958 TM Act, also lends credence to the intent of the Legislature being to take away the right of a further appeal against a judgment or order rendered by a Single Judge while exercising appellate jurisdiction. According to Mr. Anand, the issue is no longer res integra and stands conclusively settled in light of the judgment of the Supreme Court in **Kamal Kumar Dutta & Anr. v. Ruby General Hospital Ltd. & Ors.**[5], where while explaining the ambit of Section 100-A of the Code and its' overriding effect over a Letters Patent provision, the Supreme Court had observed as follows:-

> "**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: -
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> > "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

[4] 1958 TM Act
[5] (2006) 7 SCC 613

> 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.

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26. In this connection, our attention was invited to a Constitution Bench decision in *P.S. Sathappan* v. *Andhra Bank Ltd.* [(2004) 11 SCC 672] In this case, the Constitution Bench observed as follows: (SCC p. 675)

> "From Section 100-A CPC, as inserted in 1976, it can be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100-A, as amended in 2002, it can be seen that the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided."

27. Similarly, in *Subal Paul* v. *Malina Paul* [(2003) 10 SCC 361] their Lordships observed as follows: (SCC p. 368, para 20)

> "Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

28. In *Gandla Pannala Bhulaxmi* v. *Managing Director, A.P. SRTC* [AIR 2003 AP 458 (FB)] the Full Bench of the Andhra Pradesh High Court has taken a similar view in the matter. Same is the view taken by the Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai* v. *State of Kerala* [AIR 2004 Ker 111 (FB)]. Therefore, in this view of the matter, we are of the opinion that the preliminary objection raised by Mr Nariman cannot be sustained and the same is overruled."

5. Mr. Anand pointed out that the decision in *Kamal Kumar Dutta* though rendered in the context of appellate proceedings which

emanated from an order of the erstwhile Company Law Board under the provisions of the Companies Act, 1956, is a binding authority for the proposition that Section 100-A of the Code takes away the right of any further appeal even though the same may have earlier existed in terms of a Letters Patent of a High Court. Mr. Anand also invited our attention to the decisions rendered by the Full Bench of the Andhra Pradesh High Court in **Gandla Pannala Bhulaxmi v. Managing Director, A.P. SRTC & Anr.**[6]**,** as well as that of the Kerala High Court in **Kesava Pillai Sreedharan Pillai & etc. v. State of Kerala & Ors.**[7], which were approved by the Supreme Court in *Kamal Kumar Dutta.* In *Gandla Pannala,* the Full Bench of the Andhra Pradesh High Court was called upon to consider, whether the right of appeal as available under the Letters Patent Act would be taken away by virtue of Section 100-A of the Code in respect of matters arising under special enactments. While answering the aforesaid question, the Full Bench of the Andhra Pradesh High Court held as follows:-

> "**11.** Evidently, no provision similar to Section 100-A of the Code, which prohibits filing of further appeal against the decree and judgment or order of a learned single Judge to a Division Bench notwithstanding anything contained in Letters Patent, had fallen for consideration in that case. On the other hand, it is implicit in the said judgment that statutory enactment concerned can always exclude and affect the power flowing from the paramount charter under which an appeal may have been provided against the decree and judgment or order of a learned Single Judge.
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> **12.** In *Sharda Devi* v. *State of Bihar*, 2002 (3) SCC 705, the question as to whether Letters Patent Appeals was maintainable

[6] 2003 SCC OnLine AP 525

[7] 2003 SCC OnLine Ker 293

before the Letters Patent Bench against the judgment and decree of the learned Single Judge of the High Court passed in an appeal preferred under Section 54 of the Land Acquisition Act, 1894 had arisen for consideration. The Supreme Court held that "by virtue of the Letters Patent "an appeal" against the judgment of a single Judge of the High Court would lie to a Division Bench. Section 54 of the Land Acquisition Act does not exclude an appeal under the Letters Patent. The word "only" occurring immediately after the non-obstante clause in Section 54 refers to the forum of appeal. In other words, it provides that the appeal will be to the High Court and not to any other Court e.g., the District Court. The term "an appeal" does not restrict it to only one appeal in the High Court. The term "an appeal" would take within its sweep even a Letters Patent Appeal".

13. The Supreme Court having held that Section 54 of the. Land Acquisition Act, 1894 in no manner affects or restricts the right of an aggrieved individual to file a letters patent appeal observed that "a Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent". (Emphasis is of ours).

14. We have already noticed that the newly incorporated Section 100-A of the Code in clear and specific terms prohibits further appeal against the decree and judgment or order of a learned Single Judge to a Division Bench notwithstanding anything contained in the Letters Patent. The Letters Patent which provides for further appeal to a Division Bench remains intact, but the right to prefer a further appeal is taken away even in respect of the matters arising under the special enactments or other instruments having the force of law be it against an original or appellate decree or order heard and decided by a single Judge.

15. In the case on hand, the Motor Vehicles Act itself does not provide for any further appeal against the decree or order passed by a learned Single Judge to a Division Bench.

16. For all the aforesaid reasons, we hold that the right of appeal available under the Letters Patent is taken away by Section 100-A

of the Code even in respect of the matters arising under the special enactments or other instruments having the force of law."

6. It was further submitted by Mr. Anand that the view so expressed in *Gandla Pannala* was again reiterated by a Larger Bench of five learned Judges of the said High Court in **United India Insurance Co. Ltd., Palamaner Branch, Tirupathi v. S. Surya Prakash Reddy & Ors.**[8]. While revisiting the issue of the right of an intra-court appeal as available under the Letters Patent and the impact of Section 100A of the Code, the Andhra Pradesh High Court in *United India Insurance* held as follows:-

> **"39.** The ratio of these decisions is that the competent Legislature can amend and even abolish the Letters Patent. Undisputedly, Section 100-A of the Code is a piece of legislation enacted by the competent Legislature *i.e.*, the Parliament. The *non-obstante* clause contained in Section 100-A of the Code, as amended by 2002 Act, has the effect of taking away the right of appeal which may earlier be available either under the Letters Patent or any provision of law, including the Code. The use of the expression "in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force" in Section 100-A is clearly indicative of the Legislature's intention to bar Letters Patent Appeal against the judgment rendered by a Single Bench in an appeal arising from an original or appellate decree or order. The language of Section 100-A 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 other enactments. Therefore, full effect deserves to be given to the legislative intendment enshrined in the *non-obstante* clause contained in Section 100-A and it must be held that an appellate judgment rendered by the Single Bench in matters arising out of the Code, as also other enactments, is expressly barred with effect from 1-7-2002.

[8] 2006 SCC OnLine AP 434

40. Section 173 of the Motor Vehicles Act, 1988 provides for an appeal against an award made by the Motor Accidents Claim Tribunal under Section 166 of the Motor Vehicles Act, 1973. Section 54 of the Land Acquisition Act, 1894 provides for an appeal against the award of the Reference Court. Section 30 of the Workmen's Compensation Act, 1923 provides for an appeal against an order made by the Commissioner. Similar provisions are available in other enactments for an appeal against an award or order passed by the competent authority or Court. As per the High Court Rules, all such appeals are heard by Single Bench. There is no provision in these enactments under which an appeal can be preferred against the judgment rendered by the Single Bench in a matter arising out of an award or order made by the competent authority or Court. Such appeal could be filed only under Clause 15 of the Letters Patent. However, by virtue of the *non-obstante* clause contained in Section 100-A, with reference to Letters Patent and all other statutory enactments, no appeal can now be maintained under Clause 15 of the Letters Patent against the judgment rendered by a Single Bench in an appeal arising out of these enactments.

41. In view of the above discussion, the question referred to the Larger Bench is answered in the following terms:

> "After insertion of amended Section 100-A in the Code of Civil Procedure, 1908, by Act No. 22 of 2002, Letters Patent Appeal is not maintainable against the judgment rendered by a Single Bench in an appeal arising out of a special enactment."

7. We also take note of the judgment rendered by the Full Bench of the Kerala High Court in *Kesava Pillai* which while considering an identical issue albeit in the context of an order in appeal passed by a Single Judge of the High Court under Section 54 of the Land Acquisition Act, 1894, the said High Court had held as under:-

"**10.** Section 100-A was substituted by Section 10 of the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) which came into force with effect from 1-7-2002. It 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 other instrument having the force of law or in any other law for the time being in force,—
>
> (a) where any appeal from an original or appellate decree or order is heard and decided,
>
> (b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution; by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge."

11. The Objects and Reasons for amendment reads as follows:—

> "Justice Malimath Committee examined the issue of further appeal against the judgment of single Judge exercising even a first appellate jurisdiction. The Committee recommended for Suitable amendments to Section 100-A of the Code with a view to provide that further appeal in this regard shall not lie. The Committee also recommended for suitable enactment by Parliament for abolition of appeal to a Division Bench against the decision and order rendered by a single Judge of the High Court in a proceeding under Article 226 or 227 of the Constitution. Clause 10 seeks to substitute a new Section 100-A with a view to provide for no further appeal in the above cases."
>
> The Legislature wanted to take away the further appeals not only from am original decree or order, but even the right of appeal conferred on the litigant against the decisions rendered by a single Judge while disposing of a writ petition filed under Article 226 or 227 of the Indian Constitution. The purpose was to avoid a system of entertaining a second appeal in the High Court in all categories of cases.

12. Section 100-A was again amended by Section 4 of the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) which came into force with effect from 1-7-2002. At present Sect. 100-A 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."

In Clause 3(j) of the Objects and Reasons contained in the Act 22 of 2002 it is stated as follows:—

> "(j) appeals to Division Bench of the High Courts in writs under Articles 226 and 227 of the Constitution shall be restored. Section 10 of the Code of Civil Procedure (Amendment) Act, 1999 abolished appeals against judgments of a single Judge of the High Court in all cases."

13. Section 100-A begins with the words '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, a second appeal from a judgment rendered by a single Judge except under Articles 226 and 227 of the Constitution of India is barred. A clause beginning with "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force is appended to a section in the beginning with a view to give the enacting part of the Section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause. It is equivalent to say that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation. It is well settled position of law that the non obstante clause is used as a legislative device to modify the ambit of the provision of law mentioned in the non obstante clause. In Aswini Kumar Arbinda Bose, (1952) 2 SCC 237 : AIR 1952 SC 369, it was held that the enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously. In *Madhav Rao Scindia* v. *Union of India*, AIR 1971 SC 530, the Apex Court observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute". The principles laid down in *Aswini Kumar's case* (supra) and *Madhav Rao Scindia's case* (supra) were followed in *A.G.*

Varadarajulu v. *State of Tamil Nadu*, AIR 1998 SC 1388. It was held as follows:—

> "It is well settled that while dealing with a non obstante clause under which the Legislature wants to give overriding effect to a section, the Court must try to find out the extent to which the Legislature had intended to give one provision overriding effect over another provision. Such intention of the Legislature in this behalf is to be gathered from the enacting part of the section."

So, the intention of the Legislature is clear. The Parliament wanted to abolish the procedure of filing inter-Court appeal under Section 5(ii) of the High Court Act against any judgment or order of a single Judge except in the case of writ petitions filed under Articles 226 and 227 of the Constitution of India.

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15. The intention of the Legislature is to abolish an intra-Court appeal to the Bench of two Judges of the very same High Court from a decision rendered by a single Judge. Since a litigant who files an appeal against the decree and judgment of the civil Court is denied the opportunity of filing a further appeal we are of the view that no prejudice will be caused to a litigant who files an appeal under a special statute also by taking away the right of intra-Court appeals to a Bench of two Judges.

16. The learned counsel appearing for the appellants in both the appeals have argued that the wording of Section 100-A of the Code of Civil Procedure shows that it deals only with further appeals from an original or appellate decree or order passed under the Code of Civil Procedure and not under the provisions of special enactments like Land Acquisition Act or Motor Vehicles Act. It is argued that the Words "original decree or orders" used in Section 100-A refer only to a decree passed under the provisions of the Code of Civil Procedure by a Civil Court and not under an award passed under the Land Acquisition Act or the Motor Vehicles Act.

17. In *I.T.C. Ltd.* v. *State of Karnataka* (1985 Supp SCC 476) the Apex Court held as follows:—

> "………. where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that where two Acts, one passed by Parliament and the other by a State

Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail".

In *Kulwant Kaur* v. *Gurdial Singh Mann* (2001) 4 SCC 262: (AIR 2001 SC 1273) the Apex Court held as follows:—

"Special or local laws would remain functional only as long as there is no specific provision to the contrary legislated by Parliament— The moment such law comes into conflict with Central legislation it becomes inapplicable and is deemed to be repealed." It was further held:—

"Incorporation of the Civil Procedure Code (Amendment) Act in the statute-book is by virtue of conferment of power under Entry 13, List III of the Seventh Schedule of the Constitution. The Constitution is the parent document and is supreme which has a binding effect on all and by virtue of the provisions of the Constitution, parliamentary supremacy in regard to the adaptation of laws if within the area of operation as provided under List I or List III is recognised."

In view of the principles discussed above, it is clear that the provisions contained in Section 100-A of the Code of Civil Procedure will prevail over the provisions contained in Section 5(ii) of the Kerala High Court Act regarding a further appeal to a Bench of two Judges from the decision of a single Judge. We have already found that a decision rendered by single Judge is to be treated as a decree, judgment or order passed by the single Judge under Section 3(13)(b) of the Kerala High Court Act and not as one rendered under the Land Acquisition Act or Motor Vehicles Act. We do not find any justification in limiting the applicability to Section 100-A to the appeals filed under the provisions of the Code of Civil Procedure alone.

18. The learned counsel appearing for the appellants has argued that the right of appeal is a substantive right and the same accrues to a party on the date of the starting of the lis. It is argued that the right of appeal accrues to a party on the date on which a reference is made by the Land Acquisition Officer to the Court or the date on which a party files a claim petition. It is argued that the right of appeal is vested right and it cannot be taken away by an amendment to the procedure. As we have already Stated, the statute only provides for one appeal to the High Court. A second appeal was possible only in view of the provision contained in Section 5(ii) of the High Court Act. That right was taken away by the

Amendment Act 22 of 2002. Since such an appeal was possible only in view of the provision contained in Section 5(ii) of the High Court Act, we are of the view that the amendment of Section 100A of the Code of Civil Procedure, no litigant can have a substantive right for a further appeal after 1-7-2002 on the ground that the proceedings from which that appeal arises was initiated prior to 1-7-2002.

19. We, therefore, hold that no further appeal under Section 5(ii) of the Kerala High Court Act is maintainable from the judgment, decree or order passed by a single Judge under Section 3(13)(b) of the High Court Act after 1-7-2002 in view of the amended Section 100-A of the Code of Civil Procedure inserted by Act 22 of 2002. So, both the appeals are only to be dismissed as not maintainable.

In the result, A.F.A. Nos. 83 of 2002 and 87 of 2002 are dismissed in limine."

8. Proceeding further, Mr. Anand then placed reliance upon the decision of the Jammu and Kashmir High Court in **Rouf Ahmad Zaroo vs. Mst. Shafeeqa**[9]**.** The said decision emanated from proceedings initiated under the Guardians and Wards Act, 1977. While considering the question of whether an LPA would be maintainable against an order passed by a Single Judge while exercising appellate powers, the High Court answered the question in the following terms:-

"**7.** The effect of Section 100-A CPC, as introduced in the Central Code of Civil Procedure with effect from 01.07.2002, on the maintainability of an LPA against the appellate order under a special Act fell for consideration before the Supreme Court in *Kamal Kumar Dutta* v. *Ruby General Hospital Ltd.*, (2006) 7 SCC 613. In that case the appeals were preferred to the Supreme Court against the order passed by a Single Judge of the High Court of Calcutta in a matter under Sections 397 and 398 of the Indian Companies Act, 1956. A preliminary objection was taken to the maintainability of the appeal on the ground that the appellants had

[9] 2014 SCC OnLine J&K 137

an alternative remedy of approaching the Division Bench of the Calcutta High Court under Clause 15 of the Letters Patent. It was, therefore, argued that the Court should not entertain the appeals and the same should be dismissed as the appellants had alternative remedy under Clause 15 of the Letters Patent before the Calcutta High Court. Relying on the decision in *Garikapatti Veeraya* v. *N. Subbiah Choudhury*, AIR 1957 SC 540, it was submitted that the appeal is a vested right and cannot be taken away. Alternative submission was also made that if Clause 15 does not apply, appeal would lie under Section 483 of the Companies Act. In this connection reliance was placed on a decision of the Supreme Court in *Arati Dutta* v. *Eastern Tea Estate (P) Ltd.*, (1988) 1 SCC 523, and of the Bombay High Court in *Maharashtra Power Development Corpn. Ltd.* v. *Dabhol Power Co.*, (2003) 117 Comp Cas 651 (Bom). On the other hand, on behalf of the appellant reliance was placed on Section 100-A of the Code of Civil Procedure. It was urged that in view of the bar created under Section 100-A CPC, no further appeal shall lie on the judgment or decree of such single Judge. Rejecting the preliminary objection, the Court held as follows:

> "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 (Company Law Board) under Section 10-E of the Act. Appeal against the order passed by CLB, lies to the High Court under Section 10-F 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 Sections 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 Choudhury* and in that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows:

> '…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. 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…'

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…."

8. In paragraph 26 of the aforesaid judgment, the Supreme Court also referred to and quoted the observations of the Constitution Bench decision in *P.S. Sathappan* v. *Andhra Bank Ltd.*, (2004) 11 SCC 672, which are reproduced hereunder:

> "From Section 100-A CPC, as inserted in 1976, it can be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100-A, as amended in 2002, it must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided."

9. It is worthwhile to mention here that the earlier three-Judge decision of the Supreme Court in *Subal Paul* v. *Malina Paul* (supra), cited and relied upon by the learned counsel in the present case was also cited in the aforesaid matter before the Supreme Court and the Supreme Court observed that in *Subal Paul* v. *Malina Paul* (supra) their Lordships observed as under:

> "Whenever the statute provides such a bar, it is so expressly stated as would appear from Section 100-A of the Code of Civil Procedure".

**** **** ****

12. In the instant case, the appeal against the order dated 21.07.2014 passed by the learned District Judge in an application under Guardians and Wards Act was filed before the learned Single Judge under Section 47 of the Act, which provides for appeal under the Act. The learned Single Judge dismissed the appeal. The appeal before the learned Single Judge was an appeal from an original order passed by the learned District Judge. As in the Central Code of Civil Procedure, Section 100-A in the State Code of Civil Procedure was substituted by Act VI of 2009 dated 20.03.2009 by the following:

> "Notwithstanding anything contained in any Letters Patent of the High Court or in any instrument having the force of law or in any other law for the time being in force in the State, 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."

The aforesaid provision is pari materia with Section 100-A of the Central CPC. As is axiomatic, the Section starts with the non-obstante clause that 'notwithstanding anything contained in any Letters Patent of the High Court or in any instrument having the force of law or in any other law for the time being in force in the State'. Thus, under Section 100-A CPC, no further appeal has been provided and the power which used to be there under the Letters Patent of the High Court stands withdrawn by a legislative enactment and, thereby intra court appeals would not lie where a Single Judge of the Court has exercised appellate jurisdiction. The order dated 21.07.2014 passed by the learned Single Judge, being an order passed in an appeal from an original order under the Act, in terms of the settled position of law discussed above, no further appeal/intra Court appeal would lie from such order under the Letters Patent."

9. It was then pointed out that the decision in *Kamal Kumar Dutta* was reiterated by the Supreme Court in **Mohd. Saud & Anr. v. Dr.**

(Maj.) Shaikh Mahfooz & Ors.[10]**,** wherein the following principles came to be enunciated:-

> "**9.** The validity of Section 100-A CPC has been upheld by the decision of this Court in *Salem Advocate Bar Assn.* v. *Union of India* [(2003) 1 SCC 49 : AIR 2003 SC 189] . The Full Benches of the Andhra Pradesh High Court vide *Gandla Pannala Bhulaxmi* v. *A.P. SRTC* [AIR 2003 AP 458] , the Madhya Pradesh High Court in *Laxminarayan* v. *Shivlal Gujar* [AIR 2003 MP 49] , and of the Kerala High Court in *Kesava Pillai Sreedharan Pillai* v. *State of Kerala* [AIR 2004 Ker 111] have held that after the amendment of Section 100-A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of a learned Single Judge of the High Court passed in an appeal. We respectfully agree with the aforesaid decisions.
>
> **10.** In *Kamla Devi* v. *Kushal Kanwar* [(2006) 13 SCC 295: AIR 2007 SC 663] this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable. In the present case the LPAs were filed after 2002 and hence in our opinion they are not maintainable.
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> **** **** ****
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> **14.** It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or *order* is heard and decided by a Single Judge of a High Court" (emphasis supplied), in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the latter part of the section mentions judgment and decree.
>
> **15.** To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the

[10] (2010) 13 SCC 517

learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of the object of Section 100-A, that is, to curtail the number of appeals."

10. Mr. Anand also sought to draw sustenance from the decision rendered by the Supreme Court in **Vasanthi v. Venugopal (Dead) through Legal Representatives**[11] where the position of Section 100-A of the Code and its import was explained as follows: -

> "**13.** This amended provision enforced w.e.f. 1-7-2002 predicated that 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 would lie from the judgment and decree of such Single Judge.
>
> **14.** The purport and purview of this amended provision fell for the scrutiny of this Court, amongst others in *Kamla Devi* [*Kamla Devi* v. *Kushal Kanwar*, (2006) 13 SCC 295] and *Mohd. Saud* [*Mohd. Saud* v. *Sk. Mahfooz*, (2010) 13 SCC 517 : (2010) 4 SCC (Civ) 958] , wherein it was held in unambiguous terms that only letters patent appeal, filed prior to the coming into force of the said amendment vide Act 22 of 2002 would be maintainable and as a corollary, by virtue of the bar contained therein, letters patent appeal filed thereafter, would not be maintainable."

11. Yet another decision which was cited for our consideration was that of **Metro Tyres Ltd. & Ors. v. Satpal Singh Bhandari & Ors.**[12] handed down by a Division Bench of our Court. Following the judgment in *Kamal Kumar Dutta* and the various other decisions of

[11] (2017) 4 SCC 723
[12] 2011 SCC OnLine Del 3681

the Supreme Court following the principles laid down therein, the Division Bench observed as under: -

> "**16.** The legislature at the time of incorporation of Section 100A, as has been interpreted in *Kamla Devi* (supra), *Avtar Narain Behal* (supra) and *Laxminarayan* (supra) intended to give limited retroactivity to the provision in question. The view that has been expressed is that the appeals which have been filed prior to the cut-off date, that is, 1st July, 2002 also would be saved. The contention that the right of a suitor to prefer a Letters Patent Appeal was a vested right, despite the language employed in Section 100A of the CPC was repealed. Thus, the language employed in Section 100A of the CPC clearly means that no further appeal shall lie from an appeal from an original order or the decree if it is heard or decided by the learned Single Judge by the cut-off date. It does not stand to reason that if appeal filed after the cut-off date before the learned Single Judge is dismissed and thereafter he declines to restore the appeal, a Letters Patent Appeal would lie. The words 'heard and decided' if read out of context would make the entire provision redundant. It has to be interpreted keeping in view the context itself. Section 100A was amended with effect from 1st July, 2002 to take away the further appeal from a decree or an order. The fundamental purpose was to minimize the sphere of appeals. If the submission of Mr. Sibal is accepted as the factual matrix would reveal, a litigant can prefer an appeal under Order 43 Rule 1 and allow it to dismiss for default or show total callousness in getting it dismissed for want of prosecution and thereafter file an application for restoration at his own leisure and being unsuccessful prefer a Letters Patent Appeal contending it is maintainable. Thus, this interpretation could give a premium to an unscrupulous or negligent litigant. That apart, it would be totally against the scheme of Section 100A of the CPC and the same was not the legislative intendment or purpose. The courts are required to place the interpretation on a provision which would subserve the purpose of the legislative intention unless the same brings in a situation of an irreconciliability or absurdity. In this context, we may profitably refer to the decision in *Chief Justice of A.P.* v. *L.V.A. Dikshitulu*, (1979) 2 SCC 34, a Constitution Bench has ruled that it is the duty of the court to understand the legislative intent and for the said purpose the court can call in aid well recognised rules of construction, such as legislative theory, the basic scheme and framework of the statute as a whole. Their Lordships have laid

> emphasis on the purpose of the legislation and the object sought to be achieved."

12. Mr. Anand also cited for our consideration the judgment of the Supreme Court in **Geeta Devi & Ors. v. Puran Ram Raigar & Anr.**[13], wherein yet again it was opined that an intra-court appeal against an order passed by a learned Single Judge would not maintainable in terms of Section 100-A of the Code. Mr. Anand also drew our attention to the decision rendered by a Division Bench of our Court in **N.G. Nanda & Ors. v. Gurbax Singh & Ors.**[14], which again dealt with the scope and ambit of Section 100-A of the Code. It becomes pertinent to note that the aforesaid judgment was rendered in the context of the civil court disallowing an application for setting aside the abatement of a suit and the appeal which was taken in that respect before a learned Single Judge. The learned Single Judge had proceeded to allow the said appeal permitting the impleadment of the heirs of the deceased in the suit proceedings. The said order of the learned Single Judge was assailed by way of an LPA before the Division Bench of our Court. That appeal came to be dismissed as being not maintainable in light of Section 100-A of the Code. The decision cited for our consideration in *N.G. Nanda* was one which was handed out on the review petition which came to be preferred. The review petition was rejected and the original decision of the Division Bench was reaffirmed.

[13] (2010) 9 SCC 84
[14] 2010 SCC OnLine Del 3622

13. It becomes pertinent to note that the Division Bench had originally rejected the LPA bearing in mind the decision rendered by a Full Bench of our Court in **Avtar Narain Behal v. Subhash Chander Behal.**[15] In *Avtar Narain Behal* the Full Bench was called upon to answer the question of whether an LPA would be maintainable against the judgment of a Single Judge of the High Court pronounced upon a first appeal. The Full Bench while answering the question in the negative held as follows:-

> "**18.** A plain reading of the above observations makes it clear that the right of appeal conferred by the Letters Patent can be taken away by the Parliament by enacting appropriate provision in the CPC and the provisions contained in Section 100A of CPC expressly barred a second appeal against a judgment and order in the first appeal passed by a single Judge.
>
> **19.** The effect of Section 100A of the Code on the maintainability of Letters Patent Appeal against an appellate order under special Act fell for consideration in a recent judgment of a two Judge Bench in *Kamal Kumar Dutta* v. *Ruby General Hospital Ltd.*, (2006) 7 SCC 613. In this case the appeals were preferred to the Supreme Court against the order passed by a single Judge of the High Court in a matter under Sections 397 and 398 of the Companies Act, 1956. A preliminary objection was taken to the maintainability of the appeal on the ground that the appellants have alternative remedy of approaching the Division Bench of the Calcutta High Court under Clause 15 of the Letters Patent. It was, therefore, argued that the Court should not entertain the appeals and the same should be dismissed as the appellants have alternative remedy under Clause 15 of the Letters Patent before the Calcutta High Court. Relying on the decision in *Garikapatti Veeraya* v. *N. Subbiah Choudhury* (supra) it was submitted that the appeal is a vested right and cannot be taken away. Alternative submission was also made that if Clause 15 does not apply, appeal would lie under Section 483 of the Companies Act. In this connection reliance was placed on a decision of the Supreme Court in *Arati*

[15] 2008 SCC OnLine Del 1154

Dutta v. *Eastern Tea Estate (P) Ltd.*, (1988) 1 SCC 523 and of the Bombay High Court in *Maharashtra Power Development Corpn. Ltd.* v. *Dabhol Power Co.*, (2003) 117 Comp Cas 651 (Bom). On the other hand, on behalf of the appellant reliance was placed on Section 100A of the Code of Civil Procedure. It was urged that in view of the bar created under Section 100A no further appeal shall lie on the judgment or decree of such single Judge. Rejecting the preliminary objection the Court held as follows: (SCC pages 627 to 630)

> "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 10-F 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 Sections 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 Choudhury* and in

that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows:

> "… 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.
>
> 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.

24. In this connection, our attention was invited to a decision in *Arati Dutta* v. *Eastern Tea Estate (P) Ltd.* This was a case in which the power was exercised by the learned

Single Judge under Sections 397 and 398 of the Act and against that order appeal lay to the Division Bench of the High Court under Section 483 of the Act. In that context, their Lordships observed that mere absence of procedural rules would not deprive the litigant of the substantive right conferred by the statute. We have already explained above that earlier the power under Sections 397 and 398 of the Act was being exercised by the learned Company Judge in the High Court and, therefore, appeal lay to the Division Bench under Section 483 of the Act. If the power has been exercised by the Company Judge in the High Court, then one appeal shall lie before the Division Bench of the High Court under Section 483 of the Act. But that is not the situation in the present case. Therefore, this decision cannot be of any help to the respondents.

25. In this connection, our attention was invited to a decision of the Bombay High Court in *Maharashtra Power Development Corpn. Ltd.* v. *Dabhol Power Co.* In that case, the High Court took the view that despite the amendment in Section 100-A of the Code of Civil Procedure, order passed by the Single Judge in appeal arising out of the order passed by CLB under Sections 397 and 398 of the Act, appeal lay to the Division Bench and in that connection, the Division Bench invoked Section 4(1) of the Code of Civil Procedure which says that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force and, therefore, the Division Bench concluded that the letters patent appeal is a statutory appeal and special enactment. Therefore, appeal shall lie to the Division Bench. We regret to say that this is not the correct position of law. We have already explained the facts above and we have explained Section 100-A of the Code of Civil Procedure to indicate that the power was specifically taken away by the legislature. Therefore, the view taken by the Bombay High Court in *Maharashtra Power Development Corpn.* cannot be said to be the correct proposition of law.

26. In this connection, our attention was invited to a Constitution Bench decision in *P.S. Sathappan* v. *Andhra*

Bank Ltd. In this case, the Constitution Bench observed as follows: (SCC p. 675)

> "From Section 100-A CPC, as inserted in 1976, it can be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100-A, as amended in 2002, it can be seen that the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided."

27. Similarly, in *Subal Paul* v. *Malina Paul* their Lordships observed as follows: (SCC p. 368, para 20)

> "Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

28. In *Gandla Pannala Bhulaxmi* v. *Managing Director, A.P. SRTC* the Full Bench of the Andhra Pradesh High Court has taken a similar view in the matter. Same is the view taken by the Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai* v. *State of Kerala*. Therefore, in this view of the matter, we are of the opinion that the preliminary objection raised by Mr. Nariman cannot be sustained and the same is overruled."

20. It is, thus, clearly held by the two Judge Bench that a Letters Patent Appeal against a decision rendered by the single Judge in an appeal arising under the special statute is also barred by Section 100A of the Code of Civil Procedure.

21. In *Salem Advocate Bar Association* v. *Union of India* ((2003) 1 SCC 49), the Supreme Court observed as follows:

> "Section 100-A deals with two types of cases which are decided by a Single Judge. One is where the Single Judge hears an appeal from an appellate decree or order. The question of there being any further appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a Single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a Single Judge. In such a case to give a further right of appeal where the amount involved is nominal to a Division Bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-court appeal, even where the value involved is large. In such a case, the High Court by rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100-A."

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. The next submission of Mr. Arvind Nigam is that even if it is held that Section 100A would bar a Letters Patent Appeal arising under a special enactment nevertheless those provisions will not operate to bar the present Letters Patent Appeal, since the proceedings commenced long prior to the insertion of Section 100A of the Code of Civil Procedure. It is true that right of appeal is a matter of substance and not of procedure, and such right is vested on the date when the original proceedings are instituted. However, the vested right of appeal can be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment. In *Bhenov G. Dembla* v. *Prem Kutir (P) Ltd.*, (Bom."), 2003 Company Cases (Vol. 117) 643), a Division Bench of the Bombay High Court to which one of us (A.P. Shah, CJ.) was a party held that the provisions of Section 100A are to the effect that 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. The use of the word "is" would make it abundantly clear that what the legislature intended was that no further appeal should be maintainable where any appeal from an original or appellate decree or order is heard and decided after July 1, 2002, by a single Judge of a High Court. 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).
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> **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."

14. It becomes pertinent to note that the Full Bench while rendering its opinion in *Avtar Narain Behal* had an occasion to notice the decision of the Supreme Court in *Kamal Kumar Dutta* as well as the Full Bench decisions of the Andhra Pradesh and Kerala High Court noticed by us hereinabove. Mr. Anand also invited our attention to the judgment rendered by a Full Bench of the Gujarat High Court in **Nasik Hing Supplying Co. v. Annapurna Gruh Udyog Bhandar, Ahmedabad & Anr.**[16], which was called upon to consider the impact of Section 100A of the Code on the maintainability of an appeal in terms of Section 109(5) of the of the 1958 TM Act. It was pointed out by the Gujarat High Court in *Nasik Hing Supplying Co.* that the remedy of an appeal as created in terms of Section 109(5) would lie notwithstanding Section 100-A as introduced in the Code. While

[16] 2003 SCC OnLine Guj 43

answering the question that stood posited, the Gujarat High Court observed as under:-

> "**21.4** We are inclined to agree with the interpretation placed by the Division Bench in *Madhusudan Vegetable's case* on Section 100-A, CPC. The expression "any appeal from an appellate decree or order" as contained in Section 100-A as inserted by the Code of Civil Procedure (Amendment) Act, 1976 (which remained in force from 1-2-1977 to 30-6-2002) meant "an appeal from an appellate decree or an appeal from an order" and it did not mean "an appeal from any appellate decree or an appeal from any appellate order", because the Civil Procedure Code contemplates only three kinds of appeals—
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> (a) appeals against original decrees (Sec. 96).
>
> (b) appeals against appellate decrees (Sec. 100).
>
> (c) appeals against orders (Sec. 104).
>
> The Code itself does not contemplate any appeal from an appellate order as distinguished from an appeal from an appellate decree. Section 108 also fortifies this interpretation. This, however, need not detain us further.
>
> **21.5** While enunciating the aforesaid principles as set out in para 21.2 hereinabove, the Court expressly refrained from expressing any opinion regarding maintainability of appeals under certain other statutes like the Employees' State Insurance Act, 1948, Workmen's Compensation Act, 1923, Land Acquisition Act, 1894 or Bombay Public Trusts Act, 1950 etc. The Court specifically observed that it should not be taken to have expressed any opinion on the question whether Section 100-A bars Letters Patent Appeals against decisions of single Judges of the High Court while exercising appellate jurisdiction under such special statutes and clarified in the said case of *Madhusudan Vegetable Products Co. Ltd.* (AIR 1986 Guj 156) that the Court was only concerned with the short question whether Section 100-A of the CPC bars Letters Patent Appeal against decisions of the learned single Judge in exercise of his powers under Section 104 read with Order 43, Rule 1 of the CPC and answered the question by laying down that Section 100-A does expressly bar such a Letters Patent Appeal.
>
> **22.** Our discussion in the preceding paragraphs also indicates that Sec. 100-A bars Letters Patent Appeal against the decision of a single Judge of a High Court in respect of such appeals arising out

of the appellate decrees and orders of the Courts subordinate to the High Court but Section 100-A does not purport to take away the substantive right of appeal conferred by a special statute like the Trade Marks Act.

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24. In our view, in *Jaimin Desai's case* (AIR 2000 Guj 139), the Division Bench of this Court was only concerned with the question about maintainability of Letters Patent Appeal against the order of a single Judge of this Court in an appeal from order under Section 104(1) read with Order 43, Rule 1.

In view of the decision of the Apex Court in *Shah Babulal Khimji* v. *Jayaben D. Kania*, AIR 1981 SC 1786 and the said decision as explained by another Division Bench of this Court in *Madhusudan Vegetable Products Co. Ltd.* v. *Rupa Chemicals*, AIR 1986 Guj 156, the conclusion in *Jaimin Desai's case* (AIR 2000 Guj 139) that the Letters Patent Appeal against the decision of a single Judge of this Court in a appeal from order under Section 104(1) read with Order 43, Rule 1 was not maintainable was certainly correct. However, the observations made in paragraphs 24, 26 and 61 of the said Division Bench judgment in *Jaimin Desai's case* quoted hereinabove run counter to the language of Clause 15 of the Letters Patent as analysed in paragraphs 11 and 12 hereinabove and, with respect, do not place correct interpretation on the provisions of clause 15 of the Letters Patent of Bombay High Court as applicable to this Court. We are making these observations in order to clarify that the Letters Patent Appeals which were maintainable against the decision in first appeals rendered by the single Judge of this Court before coming into force of the CPC Amendments Act, 1999 and 2002 (that is, by 30th June, 2002) are not rendered incompetent on account of the aforesaid observations which were not called for in the first instance. It is only where the first appeal is decided by a single Judge of this Court on or after 1-7-2002 (that is the date of commencement of the CPC Amendment Acts 1999 and 2002) that a further appeal before the Division Bench of this Court (i.e. Letters Patent Appeal) would be barred against such decision of a single Judge of this Court.

25. <u>The analysis of the statutory provisions in the earlier part of this judgment and the discussion of the case law is more than adequate to hold that there is no substance in the first contention raised on behalf of the respondents in support of the preliminary objection to</u>

maintainability of the appeals. Section 100-A of the CPC was inserted by the Amendment Act of 1976 w.e.f. 1-2-1977 in order to bar a "third" appeal before the Division Bench of the High Court against the decision of a single Judge in the second appeal. It was only recently by the Amendment Acts of 1999 and 2002 that Section 100-A has been amended to bar even a "second" appeal against the judgment or order of a single Judge of the High Court, in cases where such appeal is decided by the single Judge on or after 1-7-2002. Since both the appeals in question under sub-sections (2) and (4) of Section 109 of the TM Act were decided by the learned single Judge on 22-6-1998 and 6-8-1998, there can be no question of applying the provisions of Section 100-A as amended by the CPC Amendment Acts of 1999 and 2002.

Even otherwise the right of appeal before a Division Bench of this Court under sub-section (5) of Section 109 of the TM Act having been conferred by a special law expressly saved by Section 4(1) of the CPC, the expression "notwithstanding anything contained in any other law for the time being in force" in Section 100-A of the CPC even after its amendment in 1999 and 2002 does not affect or limit the substantive right of appeal from the decision of a single Judge of this Court to a Division Bench of this Court, where such right is conferred by a special substantive law and not by a general law of procedure. The provisions of Section 100-A, CPC, therefore, do not override the express provisions of sub-section (5) of Section 109 of the TM Act.

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28. In view of the above discussion our conclusions are as under:—

(i) What Section 100-A of the CPC as amended by the Amendment Acts of 1999 and 2002 bars is further appeal before the Division Bench of this Court against the decision of a single Judge of this Court in appeals under Sections 96, 100 and 104 of the CPC as explained in para 12 of this judgment.

(ii) Where a special law provides for appeal against a decision of a single Judge of this Court to a Division Bench of this Court, the provisions of such special law will prevail because Section 100-A of the CPC is a part of general law of procedure which does not take away the substantive right of appeal provided by a special law, notwithstanding the non-obstante clause with which Section 100-A commences.

(iii) The appeal before a Division Bench of this Court under sub-section (5) of Section 109 of the Trade and Merchandise Marks Act, 1958 against the order of the single Judge of this Court under sub-sections (2) and (4) of Section 109 of the Trade and Merchandise Marks Act is maintainable notwithstanding the provisions of Section 100-A of the CPC, whether as inserted by the Code of Civil Procedure (Amendment) Act, 1976 (as in force from 1-2-1977 to 30-6-2002) or as amended by the Code of Civil Procedure (Amendment) Acts, 1999 and 2002 with effect from 1-7-2002 onwards.

(iv) The decision of the Division Bench of this Court in *Nahan Foundary* v. *Mohanlal Khimjibhat & Sons*, (1974) 15 Guj LR 897, has already been impliedly overruled by the Supreme Court in *Shah Babulal Khimji* v. *Jayaben*, AIR 1981 SC 1786.

(v) The decisions of the two Division-Benches of this Court in *Madhusudan Vegetable Products Co. Ltd.* v. *Rupa Chemicals*, AIR 1986 Guj 156 and in *Jaimin J. Desai* v. *GCCI*, AIR 2000 Guj 139 : 2000 (2) Guj LH 22 laying down that appeals are not maintainable against the orders passed by the single Judge of the High Court under Section 104 of the CPC are to be confined to non-maintainability of appeals under Clause 15 of the Letters Patent only. The said decisions are not to be treated as applicable to appeals provided before the Division Bench of this Court under any special or local law such as the appeals provided under sub-section (5) of Section 109 of the Trade and Merchandise Marks Act, 1958."

15. According to Mr. Anand, the aforesaid decision is liable to be appreciated bearing in mind the fact that the same had come to be handed down at a time when Section 109(5) of the 1958 TM Act existed on the statute book. It was submitted that in the absence of an identical provision being found in the 1999 Act, the statutory regime clearly appears to have undergone a significant change and consequently, it must be held that the instant appeals would not be maintainable.

16. Reliance was then lastly placed on the judgment of the Madras High Court in **W.N. Alala Sundaram vs. The Commissioner, H.R. & C.E & Ors.**[17], where yet again an identical question came up for consideration albeit in the context of proceedings initiated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. A.P Shah, C.J., speaking for the Bench observed as follows: -

> "**21.** A plain reading of the provisions of Section 100-A of C.P.C. makes it very clear that no further Appeal shall lie from the decree or order of a Single Judge to a Division Bench notwithstanding anything contained in any Letters Patent for any High Court or any other instrument having the force of law or any other law for the time being in force. There is complete prohibition of filing a further Appeal against a decree and order of a single Judge. It is a legislative declaration. 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 100-A, preferring a further Appeal to a Division Bench against a 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 even if such Appeal is provided in the said special enactment.
>
> **22.** A Larger Bench of the Andhra Pradesh High Court in *United India Insurance Co. Ltd.* v. *S. Surya Prakash Reddy*, 2006 (4) CTC 97, held that Section 100-A of the C.P.C. has the effect of taking away the right of Appeal available either under the Letters Patent or any other provision of law, including the C.P.C and an Appeal against the judgment rendered by a single Judge in an Appeal filed under the Motor Vehicles Act, 1988 is not maintainable. A Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai* v. *State of Kerala*, AIR 2004 Ker. 111, has also taken a similar view. The Full Bench held that the provisions contained in Section 100-A of C.P.C. will prevail over the provisions contained in Section 5(ii) of the Kerala High

[17] 2007 SCC OnLine Mad 505

Court Act (5 of 1959) regarding a further Appeal to a Bench of Two Judges from a decision of a Single Judge. It was also held therein that a decision rendered by a Single Judge is to be treated as a decree/judgment/order passed by the Single Judge under Section 3(13)(b) of the Kerala High Court Act and not as one rendered under the Land Acquisition Act or the Motor Vehicles Act. It was expressely held that there is no justification in limiting the applicability of Section 100-A to the Appeal filed under the provisions of the C.P.C.

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24. Certain judgments of the High Courts cited by Mr. Raghavachari and Mr. Datar in *Fazal Ali* v. *Amna Khatun*, 2005 (1) KLT 828 (Rajasthan) and *Satya Narayan Agiwal* v. *State Bank of India*, 2005 (2) BLJR 1580, *M/s. Sunny Konark Construction* v. *State of Jharkhand*, AIR 2006 Jhar. 78, cannot be regarded as good law in the light of the decisions of the Constitution Bench in *P.S. Sathappan's case* (supra) and the Two Judges Bench in *Kamal Kumar Dutta's case* (supra). Clause 44 of the Letters Patent was not considered in any of these judgments. Clause 44 makes all the provisions of the Letters Patent subject to the legislative power of the Governor-General-in-council and of the Governor-in-Council under Section 71 of the Government of India Act, 1915 and also of the Governor-General in cases of Emergency under Section 72 of the Act and can be amended in all respects. As held by the Supreme Court in *Union of India* v. *Mohindra Supply Co.* (supra) that in the post-Constitution era, the legislative power of the Governor-General or Governor-in-Council has to be construed as power of the appropriate Legislature. It is also established by a series of judgments of the Supreme Court, starting from *Hasinuddin Khan* v. *Deputy Director of Consolidation*, 1980 (3) SCC 285, that the legislature has the right to abolish Letters Patent. Section 100A of C.P.C. is a piece of legislation enacted by the Parliament. The *non-obstante* Clause contained in Section 100-A of the Code has the effect of taking away the right of Appeal which may be available either under the Letters Patent or under any provision of law, including the Code. 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" are

clearly indicative of the Legislature's intention to bar Letters Patent Appeal against the judgment rendered by a Single Bench in an Appeal arising from an original or appellate decree or order. The language of Section 100-A 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 other enactments.

25. The alternative submission of Mr. V. Raghavachari is that even if it is held that Section 100-A would bar a Letters Patent Appeal arising under a special enactment nevertheless those provisions will not operate to bar a Letters Patent Appeal, since the proceedings commenced long prior to the insertion of Section 100-A of the Code of Civil Procedure. It is true that right of Appeal is a matter of substance and not of procedure, and such right is vested on the date when the original proceedings are instituted. However, the vested right of Appeal can be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment. In *Bhenoy G. Dembla* v. *Prem Kutir (P) Ltd.*, 2003 (117) Company Cases 643 (Bom.), a Division Bench of the Bombay High Court to which one of us (A.P. Shah, C.J.) was a party held that the provisions of Section 100-A are to the effect that 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. The use of the word “is” would make it abundantly clear that what the legislature intended was that no further Appeal should be maintainable where any Appeal from an original or appellate decree or order is heard and decided after July 1, 2002, by a Single Judge of a High Court. Therefore, the necessary intendment of Section 100-A 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 100-A. A similar submission was expressly rejected by the Supreme Court in *Kamal Kumar Dutta* v. *Ruby General Hospital* (supra). 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.
>
> **26.** In the result, we hold that the Letters Patent Appeal filed against the decision of the learned Single Judge under Section 72 of the (Tamil Nadu) Hindu Religious and Charitable Endowments Act, 1959 is barred by Section 100-A of the Code of Civil Procedure. The Appeal is, therefore, dismissed as not maintainable."

17. We had the privilege of hearing Mr. Sibal and Mr. Lall, learned senior counsels as well as Ms. Sukumar, learned counsel who addressed the following submissions. It was submitted on behalf of the appellants that Section 100-A of the Code bars an intra-court appeal when the same comes to be preferred against a judgment of a Single Judge pronounced on an appeal arising out of an original or appellate decree or order. According to learned counsels, the bar created by Section 100-A of the Code would stand raised only where the Single Judge has exercised appellate jurisdiction in respect of a decree or order. It was strenuously urged that the expressions "*decree"* and *"order*" have been specifically defined under the Code and as would be manifest from a reading of Section 2(14) of the Code, the word "*order*" has been defined to mean the formal expression of a decision of a civil court. The submission in essence was that Section 100-A of the Code and its applicability would be dependent upon

whether the appellate jurisdiction exercised by a Single Judge was with respect to an "order" as defined under the Code.

18. Learned counsels submitted that none of the decisions cited on behalf of the respondents would be germane or relevant when one bears in mind the undisputed fact that the learned Single Judge in these matters had considered appeals against an order passed by the Registrar under the 1999 TM Act. This and it was so contended since the Registrar under the Act cannot be said to have acted as a civil court. Reliance in this respect was placed on the decision of the Bombay High Court in **The Anglo French Drug Co. (Eastern) Private Ltd. v. R.D. Tinaikar**[18] where the following pertinent observations came to be made:-

> "**14.** It is urged that the proviso when it refers to a party refers to that party appearing, pleading or acting on his behalf; but when it refers to a recognized agent, it refers to such agent appearing or acting for him. It is further urged that the language clearly indicates that a recognized agent is not entitled to plead, and that the act of pleading by a recognized agent is not covered by the proviso. Mr. Vaidya is right when he makes that submission. But the fallacy in Mr. Vaidya's argument lies in this that s. 9 of the Bombay Pleaders Act, 1920, refers to "any civil proceeding in any Court". The question which I have to consider is whether proceedings before the Registrar can in any sense be considered to be civil proceedings in any Court. The Registrar can in no sense be regarded as a Court. Section 70(*a*) of the Trade Marks Act provides that the Registrar shall have all the powers of a civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses. The Legislature has by that section given to the Registrar powers of a civil Court for certain purposes. The

[18] 1957 SCC OnLine Bom 165

Registrar is not constituted a Court. He may have some of the trappings of a Court, but by reason thereof it cannot be said that he is a Court. If the language used in the Act could furnish any guidance, he is referred to as a 'tribunal'. Section 2(*n*) of the Act, defines a "tribunal" to mean "the Registrar, or, as the case may be, the Court before which the proceeding concerned is pending." In this connection, it may be useful to refer to a passage in the judgment of the Judicial Committee of the Privy Council reported in *Shell Co. of Australia* v. *Federal Commissioner of Taxation* [[1931] A.C. 275.] . Lord Sankey L.C. in delivering the judgment of their Lordships observes as follows (p. 296):—

> "The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power."

15. At page 297 the observations are as under:—

> "In that connection it may be useful to enumerate some negative propositions on this subject: 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between, whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body."

16. At page 298 it is further observed as under:—

> "An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called."

17. My attention has been drawn to a decision reported in *In re National Carbon Co., Inc.* [[1934] A.I.R. Cal. 725.] where the Court held that the Controller of Patents is not technically a Court or tribunal exercising judicial functions. In my view, even though in some respects the position of the Registrar of Trade Marks may be analogous to that of a Court, he is not a Court, and the provisions of s. 9 do not apply to any proceedings before him.

18. Mr. Vaidya has urged that the Registrar should be deemed to be a Court for the purpose of the Bombay Pleaders Act, 1920, inasmuch as he says that though the expression 'Court' is not defined in that Act, the expression "Courts subordinate to the High

Court" has been defined by s. 2(*2*) of that Act. That expression has been defined to mean:

> "any court, tribunal, or person whose decree, order, decision or award is, or may hereafter be, subject to the appellate or revisional jurisdiction of the High Court;"

19. He says that an appeal is provided by s. 76 of the Trade Marks Act against a decision of the Registrar to the High Court, and that the Registrar is a tribunal from whose decision an appeal lies to the High Court, and that tribunal should be regarded as a Court subordinate to the High Court. In answer to this argument advanced by Mr. Vaidya, it is pointed out by Mr. Shavaksha that the expression "the High Court" has been defined by s. 2(*1*) of the Bombay Pleaders Act to mean "the High Court of Judicature at Bombay" so that the tribunal within the meaning of s. 2(*2*) of that Act must be one from whose decisions an appeal lies to the High Court of Judicature at Bombay. He points out that under the proviso to s. 76(*1*) of the Trade Marks Act, if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to that High Court, or, as the case may be, to the High Court within whose jurisdiction that District Court is situated. He says that if any proceedings are pending in any High Court or District Court throughout the length and breadth of India, then an appeal would lie only to that High Court from a decision of the Registrar. He says that an appeal does not necessarily lie to the High Court of Judicature at Bombay. There is considerable force in the argument of Mr. Savaksha, If Mr. Vaidya is right, at the time when the Registrar may have to decide the question whether to permit a recognised agent to plead before him or not, he would have to consider whether any proceedings concerning the trade mark would be pending before a High Court, other than the High Court at Bombay, or a District Court within the jurisdiction of a High Court other than the Bombay High Court at the time when an appeal from his decision may be filed, an event which no one can foresee. His decision may turn out to be right or wrong having regard to a future unpredictable event. There would be endless confusion if such an argument is accepted. I do not think I can infer from the definition of the expression "Court subordinate to the High Court" appearing in s. 2 of the Bombay Pleaders Act, 1920, that the Registrar is constituted a Court within the meaning of that Act."

19. Our attention was also drawn to the decision of the Supreme Court in **Khoday Distilleries Ltd. v. Scotch Whisky Association & Ors.**[19] where the position of the Registrar not being a court stood reiterated as would be evident from the following observations:-

> "**22.** Ian Barclay is admittedly the in-house Solicitor of the respondents. They have not only been filing actions against several persons infringing the said mark in India but also in several other countries like Australia and the United States of America. Ian Barclay in his affidavit stated:
>
> > "The first applicant received notice of the advertisement of the said mark Peter Scot in the Trade Mark Journal when it received a routine report from Wildbore and Gibbons dated 20-9-1974. Regrettably, the first applicant did not lodge opposition within the time allowed…."
> >
> > The respondents, therefore, were well aware that the appellant had filed an application for registration. One of the questions which was raised before Respondent 3 as also before the High Court was as to whether Article 137 of the Limitation Act, 1963 would apply to the rectification proceedings. Keeping in view the decision of this Court in *Sakura* v. *Tanaji* [(1985) 3 SCC 590: AIR 1985 SC 1279], evidently the same has to be rejected as the Registrar is not a court."

20. It was submitted that while the 1999 TM Act may empower the Registrar to adopt some of the powers which are otherwise conferred on a civil court, that alone would not be sufficient for the said authority to be recognized as a civil court itself. It was further submitted that the Supreme Court in **Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.**[20]**,** had eloquently explained as to when a court or a tribunal could be considered to be a

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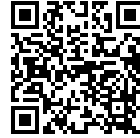
[19] (2008) 10 SCC 723

[20] (2009) 8 SCC 646

civil court. Our attention was drawn to the following paragraphs from that decision: -

> ***"Whether tribunal is a civil court***
>
> **67.** The terms "tribunal", "court" and the "civil court" have been used in the Code differently. All "courts" are "tribunals" but all "tribunals" are not "courts". Similarly all "civil courts" are "courts" but all "courts" are not "civil courts." It is not much in dispute that the broad distinction between a "court" and a "tribunal" is whereas the decision of the "court" is final the decision of the "tribunal" may not be. The "tribunal", however, which is authorised to take evidence of witnesses would ordinarily be held to be a "court" within the meaning of Section 3 of the Evidence Act, 1872. It includes not only Judges and Magistrates but also persons, except arbitrators, legally authorised to take evidence. It is an inclusive definition. There may be other forums which would also come within the purview of the said definition.
>
> **68.** In *State of M.P.* v. *Anshuman Shukla* [(2008) 7 SCC 487] this Court while holding certain authorities to be a "court" within the meaning of the Evidence Act, noted thus: (SCC p. 493, paras 19 & 21)
>
> > "*19*. The definition of 'courts' under the Evidence Act is not exhaustive (see *Empress* v. *Ashootosh Chuckerbutty* [ILR (1879-80) 4 Cal 483]). Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. …
> >
> > ***
> >
> > *21*. In *Brajnandan Sinha* v. *Jyoti Narain* [AIR 1956 SC 66] it has been held that any tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under the Court of Enquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties."
>
> The same, however, would not mean that only because a tribunal has "all the trappings of a court", it would be a court. (See *Bharat Bank Ltd.* v. *Employees* [1950 SCC 470 : AIR 1950 SC 188 : 1950 SCR 459] , SCR paras 7 and 27.)



69. Civil court is a body established by law for administration of justice. Different kinds of law, however exist, constituting different kinds of courts. Which courts would come within the definition of the civil court has been laid down under the Code of Civil Procedure itself. Civil courts contemplated under Section 9 of the Code of Civil Procedure find mention in Sections 4 and 5 thereof. Some suits may lie before the Revenue Court, some suits may lie before the Presidency Small Cause Courts. The Code of Civil Procedure itself lays down that the Revenue Courts would not be courts subordinate to the High Court.

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71. Civil courts are constituted under statutes, like the Bengal, Agra and Assam Civil Courts Act, 1887. Pecuniary and territorial jurisdiction of the civil courts are fixed in terms thereof. Jurisdiction to determine subject-matter of suit, however, emanates from Section 9 of the Code. We would revert to the interpretation of the said provision vis-à-vis the provisions of the Act a little later.

72. In *P. Sarathy* v. *SBI* [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] this Court opined that although there exists a distinction between a court and a civil court, but held that a tribunal which has not merely the trappings of a court but has also the power to give a decision or a judgment which has finality and authoritativeness will be court within the meaning of Section 14 of the Limitation Act, 1963. In the context of Section 29(2) of the Limitation Act, 1963 the term "court" is considered to be of wide import. However, there again even for that purpose exists a distinction between a court and the civil court. In *P. Sarathy* v. *SBI* [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] this Court has held: (SCC pp. 360-61, paras 12-13)

> "*12*. It will be noticed that Section 14 of the Limitation Act does not speak of a 'civil court' but speaks only of a 'court'. It is not necessary that the court spoken of in Section 14 should be a 'civil court'. Any authority or tribunal having the trappings of a court would be a 'court' within the meaning of this section.
>
> *13*. … in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a Judicial Tribunal, power to give a decision or a definitive judgment

which has FINALITY and AUTHORITATIVENESS which are the essential tests of a judicial pronouncement."

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83. Reliance has also been placed on a decision of this Court in *Rajasthan SRTC* [(1997) 6 SCC 100] wherein a Motor Accidents Claims Tribunal was held to be a civil court purporting to be on the basis of a decision in *Bhagwati Devi* [1983 ACJ 123 (SC)] wherein the principles contained in Order 23 of the Code had been held to be applicable to the Motor Accidents Claims Tribunal. A provision in the Code which is benevolent in character and subserves the social justice doctrine in a situation of that nature has been applied, but the same, in our opinion, by itself would not make a Tribunal a civil court. No reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 of the Act.

84. The Court in *Rajasthan SRTC case* [(1997) 6 SCC 100] appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 of the Motor Vehicles Act, 1988 from an award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. The Motor Accidents Claims Tribunal, thus, is a court subordinate to the High Court. No appeal against the judgment of the Debts Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are differently structured and have been established to serve totally different purposes.

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89. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a full fledged trial in terms of the provisions of the Code of Civil Procedure and/or the Evidence Act. It is now trite law that jurisdiction of a court must be determined having regard to the purpose and object of the Act. If Parliament, keeping in view the purpose and object thereof thought it fit to create separate Tribunal so as to enable the banks and the financial institutions to recover the debts expeditiously wherefor the provisions contained in the Code of Civil Procedure as also the Evidence Act need not necessarily be resorted to, in our opinion, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be conferred upon it so as to enable this Court to transfer the case from the civil court to a tribunal.

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91. Would the Tribunal answer the description of the civil court must be considered having regard to the provisions of the Act constituting civil court as also the provisions of the Code of Civil Procedure?

92. We have held that the Tribunals are neither civil courts nor courts subordinate to the High Court. The High Court ordinarily can be approached in exercise of its writ jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India. The High Court exercises such jurisdiction not only over the courts but also over the Tribunals. The Appellate Tribunals have been constituted for determining the appeals from judgments and orders of the Tribunal.

93. The principles of purposive construction, therefore, in our opinion, are not attracted in the instant case. Had Parliament intended to make the Tribunals civil courts, a legal fiction could have been raised. There are statutes like the Andhra Pradesh Land Grabbing Act where such a legal fiction has been raised. [See *V. Laxminarasamma* v. *A. Yadaiah* [(2009) 5 SCC 478 : (2009) 2 SCC (Cri) 711 : (2009) 3 Scale 685] .] Whereas the doctrine of purposive construction is a salutary principle, the same cannot be extended to a case which would lead to an anomaly. It can inter alia be resorted to only when difficulty or doubt arises on account of ambiguity. It is to be preferred when object and purpose of the Act is required to be promoted.

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117. The Act, although, was enacted for a specific purpose but having regard to the exclusion of jurisdiction expressly provided for in Sections 17 and 18 of the Act, it is difficult to hold that a civil court's jurisdiction is completely ousted. Indisputably the banks and the financial institutions for the purpose of enforcement of their claim for a sum below Rs 10 lakhs would have to file civil suits before the civil courts. It is only for the claims of the banks and the financial institutions above the aforementioned sum that they have to approach the Debts Recovery Tribunal. It is also without any cavil that the banks and the financial institutions, keeping in view the provisions of Sections 17 and 18 of the Act, are necessarily required to file their claim petitions before the Tribunal. The converse is not true. Debtors can file their claims of setoff or

> counterclaims only when a claim application is filed and not otherwise. Even in a given situation the banks and/or the financial institutions can ask the Tribunal to pass an appropriate order for getting the claims of setoff or the counterclaims, determined by a civil court. The Tribunal is not a high-powered tribunal. It is a one-man tribunal. Unlike some special Acts, as for example the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 it does not contain a deeming provision that the Tribunal would be deemed to be a civil court.
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> **122.** Submission of Mr Desai that this Court can direct the Tribunal to follow the provisions of the Code, in our opinion, cannot be accepted. Such a direction would be in the teeth of the provisions of the Act. Reliance placed by the learned counsel on sub-section (2) of Section 22 of the Act to contend that the provisions of the Code are applicable, in our opinion, militates against the said contention. Sub-section (2) of Section 22 deals with applicability of the provisions of the Code in a limited manner.
>
> **123.** Sub-section (3) of Section 22 raises a legal fiction that the proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for all the purposes of Section 196 of the Penal Code, 1860. The very fact that a legal fiction has been created and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, itself suggests that Parliament did not intend to take away the jurisdiction of the civil court. In any event, the said legal fiction has a limited application. Its scope and ambit cannot be extended. In *Bharat Bank Ltd.* [1950 SCC 470 : AIR 1950 SC 188 : 1950 SCR 459] it has clearly been held that although the Labour Court may have all the trappings of a court, but it is still not a court."

21. This would be an appropriate juncture for this Court to notice some of the additional judgments which were cited by Mr. Sibal in support of his submission that the appeal would be maintainable under the Letters Patent. Mr. Sibal firstly drew our attention to the judgment rendered by the Full Bench of this Court in **Mahli Devi v. Chander**

Bhan & Ors.[21], which was considering the issue of whether an LPA under Clause 10 of the Letters Patent would be maintainable in view of the provisions of Section 54 of the Land Acquisition Act 1894.

22. In *Mahli Devi*, the Full Bench of our Court was called upon to consider whether the restrictive prescriptions as embodied in Section 54 of the Land Acquisition Act, 1894, would debar the remedy of a Second Appeal in the High Court which may have otherwise been maintainable in light of the Letters Patent. While answering the said question the Full Bench observed as follows: -

> "**12.** What follows from the aforesaid discussion of the relevant provisions of law and the judicial pronouncements on the subject is that unless a statute itself bars a second appeal in the High Court or makes the judgment of a Single Judge of the High Court final (as in case of Section 43, Delhi Rent Control Act), the Letters Patent appeal will lie from a judgment of the Single Judge of the High Court to the Division Bench of the Court. Section 54 of the Act does not contain any such bar and, therefore, an appeal under clause 10 of the Letters Patent will be maintainable. Here we may notice a judgment of the Supreme Court in *National Sewing Thread Co. Ltd.* v. *James Chadwick & Bros*, reported in AIR 1953 SC 357. The Court was considering the question on the basis of Section 76 of Trade Marks Act. Under the said Section appeal lies to the High Court. The question was whether the decision of the High Court would be a judgment for purposes of considering its appealability under the Letters Patent. It was observed "ordinarily after an appeal reaches the High Court, it has to be determined according to the rules or practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Thus, Section 76, Trade Marks Act, confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76. It has

[21] 1995 SCC OnLine Del 247

to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act."

13. These observations totally put to rest the entire controversy. Once the appeal comes to this Court rest of the proceedings will be in accordance with the rules of practice and procedure of this Court and in accordance with the provisions of the Charter, i.e. the Letters Patent. The only exception will be when a statute specifically bars such an appeal. As already noticed the statute in this case, i.e., Section 54 of the Act does not contain any specific bar to the right of second appeal. It follows that the second appeal under the Letters Patent, will be available to the party concerned."

23. The Full Bench of our Court had in *Mahli Devi* had an occasion to notice the decision of the Supreme Court in **National Sewing Thread Co. Ltd. v. James Chandwick & Bros. Ltd**[22]**.** The question which stood posited before the Supreme Court in *National Sewing Thread* was whether a second appeal would lie against a judgment rendered by a learned Single Judge while exercising appellate jurisdiction in terms of Section 76 of the **Trade Marks Act, 1940**[23]. Section 76 of the said enactment envisaged an appeal being preferred before the High Court against any decision of the Registrar rendered under the 1940 TM Act. While dealing with the said question, the Supreme Court had pertinently observed:-

"9. The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined

[22] (1953) 1 SCC 794
[23] 1940 TM Act

according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in *National Telephone Co. Ltd.* v. *Postmaster General* [*National Telephone Co. Ltd.* v. *Postmaster General*, 1913 AC 546 (HL)], in these terms : (AC p. 552)

> "… When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

The same view was expressed by Their Lordships of the Privy Council in *Adaikappa Chettiar* v. *Chandrasekhara Thevar* [*Adaikappa Chettiar* v. *Chandrasekhara Thevar*, (1946-47) 74 IA 264 : 1947 SCC OnLine PC 53] wherein it was said : (IA p. 271)

> "… where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal…."

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15. Reliance was placed by the appellants in the High Court and before us on the decision of the High Court of Judicature at Calcutta in *Indian Electric Works Ltd.* v. *Registrar of Trade Marks* [*Indian Electric Works Ltd.* v. *Registrar of Trade Marks*, AIR 1947 Cal 49 : 1946 SCC OnLine Cal 155] wherein a contrary view was expressed.

16. After a full consideration of the very elaborate and exhaustive judgment delivered in that case by both the learned Judges of the Bench that heard the appeal and with great respect we think that that case was wrongly decided and the decision is based on too narrow and restricted a construction of Section 108 of the

Government of India Act, 1915 and that in that decision full effect has not been given to the true intent and purpose of Clause 44 of the Letters Patent.

17. Both the learned Judges in *Indian Electric Works case* [*Indian Electric Works Ltd.* v. *Registrar of Trade Marks*, AIR 1947 Cal 49 : 1946 SCC OnLine Cal 155] took the view that the authority given by Section 108(1) of the 1915 statute, to make rules for the exercise by one or more Judges of the Court's appellate jurisdiction was limited to the jurisdiction then vested in the Court by Section 106(1) of the Act and by Clause 16 of the Letters Patent. It was held that such rules thus could not relate to jurisdiction conferred by an Act passed after the commencement of the 1915 statute nor to an appeal heard by the Court pursuant to such an Act, since the jurisdiction to hear such appeal having been conferred by the particular Act could not be said to have been conferred upon, or vested in the Court by Section 106(1) and by Clause 16 of the Letters Patent. This argument suffers from a twofold defect. In the first place it does not take into consideration the other provisions of the Government of India Act, 1915, particularly the provision contained in Sections 65 and 72. By Section 65(1) of the Government of India Act, 1915 the Governor General in Legislative Council was given power to make laws for all persons, for all courts, and for all places and things, within British India. By Section 72 he was also given power for promulgating ordinances in cases of emergency. By the Charter Act of 1915, therefore, the High Court possessed all the jurisdiction that it had at the commencement of the Act and could also exercise all such jurisdiction that would be conferred upon it from time to time by the legislative power conferred by that Act. Reference to the provisions of Section 9 of the High Courts Act of 1861 which Section 106(1) of the Government of India Act, 1915 replaced makes this proposition quite clear. In express terms Section 9 made the jurisdiction of the High Courts subject to the legislative powers of the Governor General in Legislative Council. Section 106 only conferred on the High Court "jurisdiction and power to make rules for regulating the practice of the Court, as were vested in them by Letters Patent, and subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as were vested in those courts at the commencement of the Act". The words "subject to the legislative powers of the Governor General" used in Section 9 of the Charter Act of 1861 were omitted from the section, because of the wide

power conferred on the Governor General by Section 65 of the Government of India Act, 1915. The jurisdiction conferred on the High Courts from the very inception was all the time liable to and subject to alteration by appropriate legislation. It is therefore not right to say that Section 108(1) of the Government of India Act, 1915 empowered the High Courts to make rules only concerning the jurisdiction that those courts exercised when that Act was passed, on the other hand power was also conferred on them to make rules in respect of all jurisdiction then enjoyed or with which they may be vested hereafter.

18. Clause 16 of the Letters Patent on which reliance was placed by the learned Judges of the Calcutta Court is in these terms:

> "The High Court shall be a court of appeal from the civil courts of Bengal and from all other courts subject to its superintendence and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force."

This clause is also subject to the legislative power of the appropriate legislature as provided in Clause 44 of the Letters Patent. This clause is in these terms:

> "The provisions of the Letters Patent are subject to the legislative powers of the Governor General in Legislative Council."

That being so the last words of the clause "now in force" on which emphasis was placed in the Calcutta judgment lose all their importance, and do not materially affect the point. The true intent and purpose of Clause 44 of the Letters Patent was to supplement the provisions of Clause 16 and other clauses of the Letters Patent. By force of this clause appellate jurisdiction conferred by fresh legislation on the High Courts stands included within the appellate jurisdiction of the Court conferred by the Letters Patent. A reference to Clause 15 of the Letters Patent of 1861 which Clause 16 replaced, fully supports this view. This clause included a provision to the following effect:

> "or shall become subject to appeal to the said High Court by virtue of such laws and regulations relating to Civil Procedure *as shall be hereafter made by the Governor in Council*,"

(emphasis supplied)

in addition to the words "laws or regulations now in force". The words above cited were omitted from Clause 16 of the later Charter and only the words "laws or regulations now in force" were retained, because these words were incorporated in the Letters Patent and were made of general application as governing all the provisions thereof by a separate clause. The Judges who gave the Calcutta decision on the other hand inferred from this change that the appellate jurisdiction of the High Court as specified in Clause 16 was confined only to the jurisdiction to hear appeals from the civil courts mentioned in that Clause and appeals under Acts passed and regulations in force up to the year 1865. In our opinion the learned Judges were in error in thinking that the appellate jurisdiction possessed by the High Court under the Letters Patent of 1865 was narrower than the jurisdiction it possessed under Clause 15 of the Letters Patent of 1861. Whatever jurisdiction had been conferred on the High Court by Clause 15 of the Letters Patent of 1861 was incorporated in the Letters Patent of 1865 (as amended) and in the same measure and to the same extent by the provisions of Clauses 16 and 44 of that Charter."

24. Mr. Sibal also placed reliance on the judgment of the Constitution Bench of the Supreme Court in **P.S. Sathappan (dead) by LRs v. Andhra Bank Ltd. & Ors.**[24] The said decision though rendered in the context of an LPA which had come to be instituted prior to the substitution of Section 100-A of the Code as it stands post its 2002 amendment was considering the issue whether the High Court of Madras had correctly opined that an LPA would not be maintainable against an order passed by a Single Judge while sitting in the appellate jurisdiction. It becomes pertinent to note that the proceedings before the High Court of Madras had itself emanated from an order passed by the civil court in execution proceedings. The

[24] (2004) 11 SCC 672

decision of the civil court was taken in appeal which came to be placed before the Single Judge of the said High Court. On the dismissal of the said appeal by the Single Judge, an LPA came to be filed. A Full Bench of the High Court of Madras while dealing with the appeal held that it would not be maintainable in view of the provisions of Section 104(2) of the Code. S.N. Variava, J, while speaking for the majority answered the question in the following terms:-

> **"20.** It must also be mentioned that, as set out hereinabove, Their Lordships considered the relevant portion of clause 15 of the Letters Patent which has been extracted in the judgment, but unfortunately another relevant portion of clause 15 has been missed. If clause 15 of the Letters Patent of the Bombay High Court is read in its entirety it leaves no manner of doubt that it provides for an appeal to the said High Court from the judgment of one Judge of the said High Court, subject to certain exceptions enumerated therein. The first part of clause 15 contemplates two types of orders passed by a Single Judge of the High Court against which an appeal shall lie to the High Court — first an order of the Single Judge exercising original jurisdiction which amounted to a judgment; and second, orders of a Single Judge of the High Court exercising appellate jurisdiction subject to the orders specified, which were excepted, such as 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 High Court, or an order made in the exercise of revisional jurisdiction, etc. Clearly, therefore, clause 15 of the Letters Patent contemplates an appeal against the judgment of a Single Judge of the High Court exercising appellate jurisdiction, provided the judgment appealed against is not one which was preferred against an appellate order, meaning thereby that no letters patent appeal would lie against an order passed by a Single Judge in second appeal, or an order passed in revisional jurisdiction. The latter part of clause 15, however, provides that an appeal shall lie to the High Court from a judgment of the Single Judge in exercise of appellate

jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal. Thus under clause 15 a letters patent appeal is competent even against an order passed by the High Court in second appeal provided the Judge deciding the case declares that the case is fit for appeal. In substance, therefore, clause 15 of the Letters Patent of the Bombay High Court provided for an appeal — (*1*) against a judgment of a Single Judge of the High Court; (*2*) against a judgment of a Single Judge of the High Court exercising appellate jurisdiction, except in cases where the Single Judge is sitting in second appeal or where he exercises the revisional jurisdiction; and (*3*) judgment of the High Court even if passed in second appeal, provided the Judge certifies it as fit for appeal to a Division Bench. Since the relevant portion of the Letters Patent was not extracted in the judgment, Their Lordships came to the conclusion set out above viz.: (SCC p. 28, para 40)

> "*40*. A perusal of the Letters Patent would clearly reveal two essential incidents — (*1*) that an appeal shall lie against any order passed by the trial Judge to a larger Bench of the same High Court, and (*2*) that where the trial Judge decides an appeal against a judgment or decree passed by the District Courts in the mofussil, a further appeal shall lie only where the Judge concerned declares it to be a fit one for appeal to a Division Bench. Thus, the special law, viz. the Letters Patent, contemplates only these two kinds of appeals and no other. There is, therefore, no warrant for accepting the argument of the respondent that if Order 43 Rule 1 applies, then a further appeal would also lie against the appellate order of the trial Judge to a Division Bench. As this is neither contemplated nor borne out by the provisions of the Letters Patent extracted above, the contention of the respondent on this score must be overruled."

21. We are of the opinion that in reaching this conclusion the Court missed the relevant portion of clause 15 of the Letters Patent of the Bombay High Court. Reliance cannot, therefore, be placed on this judgment for the proposition that under clause 15 of the Letters Patent of the Bombay High Court no appeal to a

Division Bench from the order of the Single Judge in exercise of appellate jurisdiction is maintainable.

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30. As such if an appeal is expressly saved by Section 104(1), sub-section (2) cannot apply to such an appeal. Section 104 has to be read as a whole. Merely reading sub-section (2) by ignoring the saving clause in sub-section (1) would lead to a conflict between the two sub-sections. Read as a whole and on well-established principles of interpretation it is clear that sub-section (2) can only apply to appeals not saved by sub-section (1) of Section 104. The finality provided by sub-section (2) only attaches to orders passed in appeal under Section 104 i.e. those orders against which an appeal under "any other law for the time being in force" is not permitted. Section 104(2) would not thus bar a letters patent appeal. Effect must also be given to legislative intent of introducing Section 4 CPC and the words "by any law for the time being in force" in Section 104(1). This was done to give effect to the Calcutta, Madras and Bombay views that Section 104 did not bar a Letters Patent. As appeals under "any other law for the time being in force" undeniably include a letters patent appeal, such appeals are now specifically saved. Section 104 must be read as a whole and harmoniously. If the intention was to exclude what is specifically saved in sub-section (1), then there had to be a specific exclusion. A general exclusion of this nature would not be sufficient. We are not saying that a general exclusion would never oust a letters patent appeal. However, when Section 104(1) specifically saves a letters patent appeal then the only way such an appeal could be excluded is by express mention in Section 104(2) that a letters patent appeal is also prohibited. It is for this reason that Section 4 of the Civil Procedure Code provides as follows:

> "4. *Savings*.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.
>
> (2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or

> otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land."

As stated hereinabove, a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent. But where there is an express saving in the statute/section itself, then general words to the effect that "an appeal would not lie" or "order will be final" are not sufficient. In such cases i.e. where there is an express saving, there must be an express exclusion. Sub-section (2) of Section 104 does not provide for any express exclusion. In this context reference may be made to Section 100-A. The present Section 100-A was amended in 2002. The earlier Section 100-A, introduced in 1976, 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 other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal."

It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided. After 2002, Section 100-A 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."
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> To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal.
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> **31.** Applying the above principle to the facts of this case, the appeal under clause 15 of the Letters Patent is an appeal provided by a law for the time being in force. Therefore, the finality contemplated by sub-section (2) of Section 104 did not attach to an appeal passed under such law."

25. The decision in *P.S. Sathappan* lays emphasis on the existence of a specific statutory bar in respect of a Letters Patent and the same being determinative of whether a second appeal would lie before the High Court. While the Supreme Court in *P.S. Sathappan* did have an occasion to notice Section 100-A of the Code, it took note of the fact that while the said provision would appear to bar a Letters Patent, since the appeal in those matters had been instituted prior to the amended Section 100-A coming into force, the conclusion as rendered by the Full Bench of the High Court of Madras was not tenable. While arriving at the said conclusion, the Supreme Court also made the following observations:-

> "**33.** It was also sought to be argued that if such be the interpretation of Section 104 CPC, it may create an anomalous situation and may result in discrimination inasmuch as an appeal under the Letters Patent will be available against an order passed by the High Court on its original side, whereas such an appeal will not be available in a case where the order is passed by the High Court in its appellate jurisdiction. A similar argument was urged before this Court in *South Asia Industries (P) Ltd.* [AIR 1965 SC

1442 : (1965) 2 SCR 756] but the same was repelled in the following words: (SCR p. 762 C-G)

> "The argument that a combined reading of clauses 10 and 11 of the Letters Patent leads to the conclusion that even the first part of clause 10 deals only with appeals from courts subordinate to the High Court has no force. As we have pointed out earlier, clause 11 contemplates conferment of appellate jurisdiction on the High Court by an appropriate legislature against orders of a tribunal. Far from detracting from the generality of the words 'judgment by one Judge of the said High Court', clause 11 indicates that the said judgment takes in one passed by a Single Judge in an appeal against the order of a tribunal. It is said, with some force, that if this construction be accepted, there will be an anomaly, namely, that in a case where a Single Judge of the High Court passed a judgment in exercise of his appellate jurisdiction in respect of a decree made by a court subordinate to the High Court, a further appeal to that Court will not lie unless the said Judge declares that the case is a fit one for appeal, whereas, if in exercise of his second appellate jurisdiction, he passed a judgment in an appeal against the order of a tribunal, no such declaration is necessary for taking the matter on further appeal to the said High Court. If the express intention of the legislature is clear, it is not permissible to speculate on the possible reasons that actuated the legislature to make a distinction between the two classes of cases. It may be, for ought we know, the legislature thought fit to impose a limitation in a case where 3 courts gave a decision, whereas it did not think fit to impose a limitation in a case where only one court gave a decision."

34. We find ourselves in respectful agreement with the reasoning of this Court in the aforesaid decision. The same reasoning would apply in respect of the submission that if it is held that Section 104(2) did not bar a letters patent appeal an anomalous situation would arise inasmuch as if the matter were to come to the High Court a further appeal would be permitted but if it went to the District Court a further appeal would not lie. An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for

> example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that. A District Court cannot be compared to a High Court which has special powers by virtue of Letters Patent. The District Court does not get a right to entertain a further appeal as it does not have "any law for the time being in force" which permits such an appeal. In any event we find no provisions which permit a larger Bench of the District Court to sit in appeal against an order passed by a smaller Bench of that Court. Yet in the High Court even, under Section 104 read with Order 43 Rule 1 CPC, a larger Bench can sit in appeal against an order of a Single Judge. Section 104 itself contemplates different rights of appeals. Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2). We see nothing anomalous in such a situation. Consequently the plea of discrimination urged before us must be rejected."

26. Mr. Sibal further submitted that the decision in *Kamal Kumar Dutta* was premised on the Supreme Court finding that the Company Law Board though not a court had all the trappings of a judicial institution. Mr. Sibal submitted that the "trappings of a court" test would firstly be wholly immaterial when one bears in mind the plain and unambiguous language of Section 2(14) of the Code. It was submitted that the said provision speaks only of a civil court and not of any other adjudicatory institution, be it a court or a tribunal which may have all the trappings of a court. According to Mr. Sibal, since the word "*order*" as defined under the Code speaks only of decisions of a civil court, its provisions cannot be stretched to include a tribunal or other adjudicatory forum which may have the trappings of the court. Learned senior counsel laid stress on Section 2(14) of the

Code, employing the word "*means*" while defining the expression "*order*" as occurring therein.

27. Our attention was also drawn to the celebrated decision of the Judicial Committee of the Privy Council in **Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation**[25], where Lord Sankey L.C., had succinctly explained the distinction that must be recognized to exist between a court and a tribunal. The principles so enunciated and which have been adopted and affirmed in various precedents rendered even by courts in India on the subject are extracted hereunder: -

> "The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power.
>
> It is conceded in the present case that the Commissioner himself exercised no judicial power. The exercise of such power in connection with an assessment commenced, it was said, with the Board of Review, which was in truth a Court.
>
> In that connection it may be useful to enumerate some negative propositions on this subject: 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body. See Rex v. Electricity Commissioners."

28. It was submitted by Mr. Sibal that if the tests as enunciated in *Shell Co. of Australia Ltd.,* were to be applied, it would be apparent that the Registrar while acting and discharging functions under the

[25] 1931 AC 275 (PC)

1999 TM Act cannot possibly be held to be a court. It was further submitted that merely because the 1999 TM Act confers an authority upon the Registrar to adopt some of the powers which may otherwise be exercisable by the civil court under the Code, that would not elevate it to a status equivalent to that of a civil court.

29. Our attention was additionally drawn to the decision in **Paramjeet Singh Patheja v. ICDS Ltd.**[26] where the question which arose for consideration was whether an arbitration award would amount to a decree for the purposes of the Presidency Towns Insolvency Act, 1909. Noticing the defining terms in the Code with respect to the word's "*decree*" and *order*", the Supreme Court in *Paramjeet Singh Patheja* pertinently observed as follows: -

> "**20.** Sections 2(2) and 2(14) CPC define what "decree" and "order" mean. For seeing whether a decision or determination is a decree or order, it must necessarily fall in the language of the definition. Section 2(2) CPC defines "decree" to mean
>
> > "the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include—
> >
> > (*a*) any adjudication from which an appeal lies as an appeal from an order, or
> >
> > (*b*) any order of dismissal for default.
> >
> > *Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such

[26] (2006) 13 SCC 322

adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

21. The words "court", "adjudication" and "suit" conclusively show that only a court can pass a decree and that too only in a suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the court. It is obvious that an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree.

22. Section 2(14) defines "order" to mean

> "the formal expression of any decision of a civil court which is not a decree".

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25. In *Ramshai* v. *Joylall* [AIR 1928 Cal 840 : 32 CWN 608] the Calcutta High Court held as follows: (AIR p. 840)

(*a*) *Presidency Towns Insolvency Act, Section 9(e) — Attachment in execution of award is not one in execution of a decree*

Attachment in execution of an award is not attachment in the execution of a decree within the meaning of Section 9(*e*) for the purpose of creating an act of insolvency: *Re, Bankruptcy Notice* [(1907) 1 KB 478 : 76 LJ KB 171 : 96 LT 131 (CA)] , *ref.*

(*b*) *Arbitration Act, Section 15 — Award.*

An award is a decree for the purpose of enforcing that award only."

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28. It is settled by decisions of this Court that the words "*as if*" in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.

29. Section 36 of the Arbitration and Conciliation Act, 1996 which is in *pari materia* with Section 15 of the 1899 Act, is set out hereinbelow:

> "36. *Enforcement.*—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, *the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court.*"

(emphasis supplied)

> In fact, Section 36 goes further than Section 15 of the 1899 Act and makes it clear beyond doubt that enforceability is only to be under CPC. It rules out any argument that enforceability as a decree can be sought under any other law or that initiating insolvency proceeding is a manner of enforcing a decree under CPC. Therefore the contention of the respondents that, an award rendered under the Arbitration and Conciliation Act, 1996 if not challenged within the requisite period, the same becomes final and binding as provided under Section 35 and the same can be enforced as a decree as it is as binding and conclusive as provided under Section 36 and that there is no distinction between an award and a decree, does not hold water."

30. Insofar, as the various decisions which were cited on behalf of the respondent no.1 are concerned, Mr. Sibal laid stress on the fact that most of those decisions and the principles enunciated therein are liable to be appreciated bearing in mind the fact that they emanate either from either decisions rendered by a civil court or a court/tribunal which had been deemed to be a court. It was additionally pointed out that in fact some of those judgments were rendered in the backdrop of a deeming provision conferring on the tribunal the status of a court.

31. Having noticed the rival submissions which were addressed, we find that the principal issue which falls for determination would be whether Section 100-A of the Code, while prescribing that no further appeal would lie from an original or appellate decree or order rendered by a Single Judge of a High Court would also extend to appeals that may be preferred in terms of the Letters Patent and relate to a judgment or order rendered by a Single Judge of the Court in terms of

Section 91 of the 1999 TM Act. Undisputedly, Section 91 of the 1999 TM Act, confers a right on a person aggrieved to approach the High Court by way of an appeal against any order or decision of the Registrar of Trade Marks. The 1999 TM Act as it presently stands also does not carry a provision *pari materia* to Section 109(5) as it existed in the 1958 TM Act. The position of an appeal thus appears to have reverted back to the position as it existed in the 1940 TM Act. Thus insofar, as the subject of trademarks is concerned, the only period where a second appeal was specifically provided for was under the 1958 TM Act. In fact this aspect of a legislative shift was one which was highlighted by Mr. Anand in support of his submission that a further appeal is no longer envisaged. However, we shall deal with that submission at an appropriate stage of this decision.

32. The Letters Patent provision as applicable to the present appeals in its deconstructed form would read as under: -

> "**10.** And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgement;
>
> a) (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,
>
> b) and not being an order made in the exercise of revisional jurisdiction,
>
> c) and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of Section 107 of Government of India Act or in the exercise of criminal jurisdiction)
>
> d) of one Judge of the said High Court or

> e) one Judge of any Division Court, pursuant to Section 108 of the Government of India Act,
>
> f) and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from the judgment of
>
> (i) One Judge of the High Court or
>
> (ii) One Judge of any Division Court, pursuant to the Section 108 of Government of India Act,
>
> (iii) Made on or after the first day of February, one thousand nine hundred and twenty nine in the exercise of appellate jurisdiction in respect of a decree or order
>
> (iv) Made in exercise of appellate jurisdiction by a Court, subject to the superintendence of the said High Court
>
> (v) where the Judge who passed the judgment declares that the case is a fit one for appeal,
>
> g) 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."

33. As would be evident from a reading of the first part of Clause 10 of the Letters Patent, it bars a third appeal before this Court. The issue which therefore arises is whether Section 100-A of the Code can be interpreted or construed as debarring even a second appeal which was otherwise maintainable before this Court notwithstanding it having arisen from a judgment or order rendered by a Single Judge exercising appellate jurisdiction.

34. It becomes pertinent to note that most of the decisions which were cited for our consideration and which sought to draw sustenance from *Kamal Kumar Dutta* were rendered in the context of proceedings

which either emanated from a civil court or were related to orders passed by tribunals or authorities which were understood to have all the trappings of a court. In *Kamal Kumar Dutta* the Supreme Court had specifically observed that the Company Law Board had all the trappings of a court. The Supreme had also approved the judgment of the Full Bench of the Andhra Pradesh High Court in *Gandla Pannala*. The latter decision was dealing with proceedings which arose out of orders passed by a Motor Accidents Claim Tribunal under Section 173 of the Motor Vehicles Act, 1988. It is pertinent to note that the Motor Vehicles Act 1988 and more particularly, Section 169 thereof, by virtue of a deeming provision proclaims that such a Tribunal would be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The view as expressed by the Full Bench of the Andhra Pradesh High Court in *Gandla Pannala* was reiterated by a larger Bench of that Court in *United India Insurance*. However, we find that the position of a Tribunal constituted under the Motor Vehicles Act, 1988 has been explained in *Nahar Industrial Enterprises,* wherein the Supreme Court significantly observed that such a tribunal could not possibly be conceived to be a civil court.

35. The decision of the Full Bench of the Kerala High Court in *Kesava Pillai* was rendered in view of Section 54 of the Land Acquisition Act, 1894. The Kerala High Court was dealing with the question of maintainability of an appeal against a judgment handed

down by a Single Judge in a Land Acquisition appeal. The aforesaid appeal had come to be preferred against a judgment handed down by the civil court albeit in exercise of appellate powers conferred by Section 54 of the Land Acquisition Act 1894. It is thus evident that *Kesava Pillai* and the various proceedings which fell for consideration in that decision had originated from the civil court. More importantly, the decisions rendered in the context of Section 54 of the Land Acquisition Act, 1894 must be appreciated bearing in mind the language of the provision itself. Section 54 stood framed in the following terms: -

> **"Section 54. Appeals in proceedings before Court-** Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

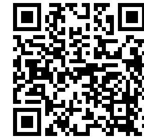
36. As would be manifest from a reading of the said provision, it firstly designated the Supreme Court to be the forum for a further appeal against a judgment rendered by the High Court. Secondly, it also and in unequivocal terms provisioned for such an appeal to be as per the provisions of the Code relating to appeals generally. Thirdly, the provision clearly intended to override any other special legislation by adopting a non obstante clause.

37. In *Rouf Ahmad Zaroo,* the High Court of Jammu and Kashmir answered the question with respect to the applicability of Section 100-A of the Code in the backdrop of an appeal placed before a Single Judge against the order passed by the Additional District Judge, Srinagar under the provisions of the Guardians and Wards Act, 1890. It becomes pertinent to note that the Guardians and Wards Act, 1890 envisaged proceedings in the first instance to be initiated before a "District Court", a phrase which was ordained to be understood as defined under the Code. Proceedings under the said enactment thus undoubtedly would have originated from a civil court.

38. The Supreme Court in *Mohd. Saud* was dealing with the question of whether an LPA would lie against a judgment rendered on a First Appeal under Order XLIII Rule 1 of the Code. Similarly, the decisions in *Vasanthi, Metro Tyres* and *N.G. Nanda* originated from proceedings laid before the civil court in the first instance.

39. The Full Bench of our Court in *Avtar Narain Behal* was again called upon to answer the question of maintainability of an LPA in the context of an order originally passed by the District Judge in proceedings instituted under the Indian Succession Act, 1925 and the appeal which was decided by a Single Judge of the Court. We similarly note that the decision in **State of M.P. & Anr. v. Anshuman Shukla**[27], rested on the provisions of the M.P. Madhyashtam Adhikaran Adhiniyam, 1983 and which in terms of

[27] (2008) 7 SCC 487



Section 24 of the said enactment, by virtue of a deeming provision clothed the Tribunal with the status of a civil court. Insofar, as the judgment of the High Court of Madras in *W.N. Alala Sundaram* is concerned, the proceeding arose from the orders passed on a suit under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which came to be decreed by the Commissioner. Those proceedings had been laid in terms of Section 70 of the aforenoted enactment before the civil court. The decision of the Division Bench of this Court in **Satish Chander Sabharwal & Anr. v. State & Ors.**[28]**,** too was a decision in which proceedings had commenced from the court of an Additional District Judge who had dismissed the probate petition and was exercising powers under the Indian Succession Act, 1925.

40. We thus have three separate and distinct streams of authorities-

I. those which pertained to matters directly governed by the Code;

II. those which pertained to proceedings which were originally initiated before a civil court;

III. thirdly, those which dealt with the question of applicability of Section 100-A of the Code rendered by courts and tribunals which were ordained to be civil courts by virtue of a statutory provision or those which were recognized to have trappings of a civil court.

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[28] 2005 SCC OnLine Del 766

41. The table(s) distinguishing judgments relied on by the Respondent No.1 and comparison of the deeming provisions as submitted by the Appellant along with their note of submissions are reproduced hereunder:-

S. No	**Case**	**Applicable Act**	**Court**			
			Court 1	**Court 2**	**Court 3**	**Court 4**
1.	Kamal Kumar Dutta & Anr. v. Ruby General Hospital Ltd. & Ors. [(2006) 7 SCC 613]	Companies Act, 2013	Company Law Board ("CLB") Deeming provision of a Civil Court - Section 424	Single Judge of the High Court (Civil Court)	Supreme Court (Civil Court) Held that an LPA to the Division Bench of the High Court would not be maintainable. CLB has all the trappings of a Civil Court	N/A
2.	Gandla Pannaia Bhulaxmi v. Managing Director, APSRTC [2003 SCC OnLine AP 525]	Motor Vehicles Act, 1988	Motor Accidents Claims Tribunal (District Judge) Deeming provision of a Civil Court - Section 165(3)(b) and 169	Single Judge of the High Court (Civil Court)	Full Bench of the High Court (Civil Court)	N/A
3.	Mohd. Saud & Anr. v. Dr. (MAJ.) Shaikh	N/A	Additional District Judge	Single Judge of the	Division Bench of the High	Supreme Court (Civil Court)

	Mahfooz & Ors (2010) 13 SCC 517		(Civil Court)	High Court (Civil Court)	Court (Civil Court)	
4.	Metro Tyres Ltd. & Ors. v. Satpal Singh Vhandari & Ors [(2011) 183 DLT311 (DB)]	N/A	Additional District Judge (Civil Court)	Single Judge of the High Court (Civil Court)	Division Bench of the High Court (Civil Court)	N/A
5.	State of Madhya Pradesh v. Anshurnan Shukla [(2008) 7 SCC 487]	Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983	Arbitration Tribunal Deemed to be a Civil Court - Section 24	Division Bench of the High Court (Civil Court)	Full Bench of the High Court (Civil Court)	Supreme Court (Civil Court) Held that the appeal was not maintainable from the Full Bench of the High Court to the Supreme Court.
6.	W.N. Alala Sundaram v. Commissioner, H.R. & C.E. Administration Department, 2007 SCC OnLine Mad 505	Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959	Trial Court (Civil Court)	Single Judge of the High Court (Civil Court)	Division Bench of the High Court (Civil Court)	

Motor Vehicles Act, 1988 (Cited in Respondents' judgment: Gandla	**Companies Act, 2013** (Cited in Respondents' judgment: Kamal Kumar	**M.P. Madhyastham Adhikaran Adhiniyam, 1983** (Cited in Respondents'	**Andhra Land Grabbing (Prohibition) Act, 1982** (Cited in Appellant's	**Trademarks Act, 1999 prior to the Tribunal Reforms Act,**	**Trademarks Act, 1999**

Pannala Bhulaxmi v. Managing Director, 2003 SCC OnLine AP 525)	Dutta & Anr. v. Ruby General Hospital Ltd. & Ors., 2006 7 SCC 613)	judgment: State of Madhya Pradesh v. Anshurnan Shukla, 2008) 7 SCC 487)	judgment: Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation, 2009 8 SCC 646)	**2021**	
S. 169. Procedure and powers of Claims Tribunals. (1) … (2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such	**S. 424. Procedure before Tribunal and Appellate Tribunal.** (1) … (2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while	**S. 24. Jurisdiction and powers of Tribunal etc. as regards offence affecting administration of justice.** (1) The Tribunal in relation to any reference or legal proceeding before it shall be deemed to be Civil Court and any reference or legal proceeding before it shall be deemed to be judicial proceeding, for the purposes of	**S. 2. Definitions.** (i-b) "Special Tribunal" means a Court of the District Judge having jurisdiction over the area concerned and includes Chief Judge, City Civil Court, Hyderabad.] **S. 9. Special Court to have the powers of the Civil Court and the Court of Session.** Save as expressly provided in this Act, the provisions of	**Repealed after the Tribunal Reforms Act, 2021.** S. 2(ze). “tribunal” means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending **S. 92. Procedure and powers of Appellate Board.** (1) .. (2) The Appellate Board shall have, for the purpose of	**S. 127. Powers of Registrar.** In all proceedings under this Act before the Registrar,- (a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions

other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).	trying a suit in respect of the following matters, namely:— (a) to (h) (3) … (4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter	any offence affecting administration of justice in so far as it is connected with such reference or legal proceeding	the Code of Civil Procedure, 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of session and shall have all the powers of a	discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely- (a) to (d) (3) Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, and the Appellate	for the examination of witnesses; (b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court: PROVIDED that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to

	XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).		Civil Court and a Court of session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.	Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.	authorise the use of the mark;

42. Having set out the rival submissions which were addressed, we proceed further to rule on the objection which stands raised. In order to appreciate the preliminary objection which was canvassed for our consideration it would, at the outset, be pertinent to notice the provisions of Clause 10 and which incorporates the letters patent power of the Court. As would be evident from a reading of the first part of Clause 10, an appeal may be preferred against a judgment rendered by a Single Judge provided it not be one passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court under the superintendence of the High Court. The said provision thus debars a third appeal and operates in a situation where a Single Judge has heard and decided a second appeal that may have been preferred in respect of a decree or order passed by a subordinate court in exercise of its appellate jurisdiction. The latter part of Clause 10 also deals with appeals against a judgment rendered by one Judge of the High Court

in exercise of appellate jurisdiction. The latter part of Clause 10 enables a litigant to institute a Letters Patent Appeal against a judgment rendered by a Single Judge after 01 February 1929 while exercising appellate powers in respect of a decree or order passed by a court falling under the superintendence of the High Court and which had passed a decree or order in exercise of appellate jurisdiction. The appeal in terms of the subsequent part of Clause 10 would lie provided the Single Judge has granted a certificate of fitness for appeal.

43. We also notice that Section 100-A, when it was originally introduced in the Code in the year 1976, by the Code of Civil Procedure (Amendment) Act of 104 of 1976, barred a further appeal being taken from an appellate decree or order by a Single Judge of the High Court. The provision, as originally introduced, thus barred a further appeal being taken from a judgment of a Single Judge provided the said Judge was hearing an appeal from an appellate decree or order. It thus stood confined to situations where a Single Judge of the High Court was considering a second appeal. Upon its amendment in the year 1999, the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), extended the bar of a further appeal even where a Single Judge may have considered the same from an original order. Although Section 100-A as it was recast in the year 1999 also extended the bar in cases where a Single Judge of a High Court may have exercised powers under Articles 226 or 227 of the Constitution, the same came to be deleted in the year 2002. In any

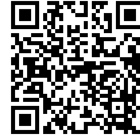
case, the said legislative amendment is of little relevance insofar as the issue which stands raised in these appeals.

44. Section 100-A as it now stands clearly stipulates that notwithstanding anything contained in the letters patent, any instrument having the force of law or any other law for the time being in force, where a Single Judge of a High Court decides a matter in exercise of appellate powers and which arises from an original or appellate decree or order, no further appeal would lie. A reading of Section 100-A of the Code would thus appear to bar a second intra court appeal.

45. It would also be profitable to notice the provision for appeals as contained in the trade mark statutes which prevailed at different points of time. Sections 76, 109 and 91 of the 1940 TM Act, 1958 TM Act and as the statute presently stands are reproduced below in a tabular form: -

The Trade Marks Act, 1940	**The Trade and Merchandise Marks Act, 1958**	**The Trade Marks Act, 1999**
76. Appeals.— (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar [* * *] under this Act or the rules made	**109. Appeals.**—(1) No appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government or from any act or order of the Registrar for the purpose of giving effect to	**91. Appeals to [High Court].**—(1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the [High Court] within three

thereunder to the High Court having jurisdiction: Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to the High Court or, as the case may be to the High Court within those jurisdiction that District Court is situated. (2) In an appeal by an applicant for registration against a decision of the Registrar under Section 13 or Section 14 or Section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the may be; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being	any such decision, order or direction. (2) Save as otherwise expressly provided in sub-section (1) or in any other provision of this Act, an appeal shall lie to the High Court within the prescribed period from any order or decision of the Registrar under this Act or the rules made thereunder. (3) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed. (4) Every such appeal shall be heard by a single Judge of the High Court : Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceedings to a Bench of the High Court. (5) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court. (6) The High Court in disposing of an appeal under this section shall have the power to make	months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal. (2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1): Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the [High Court] that he had sufficient cause for not preferring the appeal within the specified period. (3) An appeal to the [High Court] shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.



liable to pay the costs of the Registrar or the parties opposing his application. (3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to appeals before a High Court under this Act.	any order which the Registrar could make under this Act. (7) In an appeal by an applicant for registration against a decision of the Registrar under Section 17 or Section 18 or Section 21, it shall not be open, save with the express permission of the court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be, and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application. (8) Subject to the provisions of this Act and of the rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to	

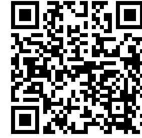
	appeals before a High Court under this Act.	

46. As would be evident from a reading of those statutory provisions, the only time when a second appeal was explicitly provisioned for was when the 1958 TM Act held the field and by virtue of Section 109(5) such an appeal was envisaged. Undisputedly, a provision akin to Section 109(5) neither existed in the 1940 TM Act nor does an identical provision appear in the 1999 TM Act. Significantly, however, both the appellate provisions as they existed in the 1940 TM Act as well as the 1958 TM Act specifically provided that appeals filed in terms of those provisions before the High Court would be governed by the provisions of the Code. This is manifest from Section 76(3) and Section 109(8) of the respective statutes. Those sub-sections in unambiguous terms provided that the provisions of the Code would apply to appeals before the High Court. However, Section 91 of the 1999 TM Act does not incorporate any such prescription. That takes us to the principal question of whether Section 100-A of the Code can be read or construed as taking away the letters patent provision of appeals and which presently does envisage an appeal being preferred before a Division Bench of our Court notwithstanding the judgment of the Single Judge having been made in the exercise of appellate jurisdiction.

47. We note that way back in the year 1953, when *National Sewing Thread Co.*, came to be rendered by the Supreme Court, a question

arose as to whether a letters patent appeal against a judgment rendered by a Single Judge of the Bombay High Court would be maintainable in the absence of Section 76 of the 1940 TM Act incorporating anything to the contrary. Section 76 as it existed in that statute did not embody a provision akin to Section 109(5) which formed part of the 1958 TM Act. Notwithstanding, the silence in this respect in Section 76 of the 1940 TM Act the Supreme Court observed as follows: -

> "**6.** The appellants preferred an appeal against the order of the Registrar to the High Court of Bombay as permitted by the provisions of Section 76 of the Trade Marks Act. Shah, J. allowed the appeal, set aside the order of the Registrar and directed the Registrar to register the mark of the appellants as a trade mark. From the judgment of Shah, J. an appeal was preferred by the respondents under Clause 15 of the Letters Patent of the Bombay High Court. The appeal was allowed and the order of the Registrar was restored with costs throughout. Hence this appeal.
>
> **** **** ****
>
> **9.** The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in *National Telephone Co. Ltd.* v. *Postmaster General* [*National Telephone Co. Ltd.* v. *Postmaster General*, 1913 AC 546 (HL)] , in these terms : (AC p. 552)
>
> > "… When a question is stated to be referred to an established Court without more, it, in my opinion, imports



> that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.”

The same view was expressed by Their Lordships of the Privy Council in *Adaikappa Chettiar* v. *Chandrasekhara Thevar* [*Adaikappa Chettiar* v. *Chandrasekhara Thevar*, (1946-47) 74 IA 264 : 1947 SCC OnLine PC 53] wherein it was said : (IA p. 271)

> “… where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal….”

10. Again, in *Secy. of State for India in Council* v. *Chelikani Rama Rao* [*Secy. of State for India in Council* v. *Chelikani Rama Rao*, (1915-16) 43 IA 192 : ILR (1916) 39 Mad 617 : 1916 SCC OnLine PC 42] , when dealing with the case under the Madras Forest Act, Their Lordships observed as follows : (IA p. 197)

> “… It was contended on behalf of the appellant that all further proceedings in courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In Their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply.”

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes

subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

48. As would be evident from the passages extracted hereinabove, *National Sewing Thread Co.* held that once an appeal reaches the High Court, its course would have to be determined in accordance with the rules of practice and procedure of that Court. The Supreme Court in *National Sewing Thread Co.* thus upheld the right of a litigant to institute a further appeal in terms of the letters patent provision which applied in the absence of anything contrary contained in the 1940 TM Act. The principles enunciated in that decision would thus lead one to conclude that a further appeal in terms of a letters patent provision would be maintainable in the absence of any contrary provision or intention being expressed either in the statute from which those proceedings emanated or any other general law. We would of course have to bear in consideration that *National Sewing Thread Co.* came to be rendered prior to the introduction of Section 100-A of the Code.

49. The issue of maintainability of a letters patent appeal again arose for consideration of the Supreme Court in **Subal Paul vs. Malina Paul & Anr.**[29]. While dealing with the aforesaid question the Supreme Court in *Subal Paul* observed as follows:

"**16.** Section 104 of the Code of Civil Procedure provides that an appeal shall lie from the orders specified therein and save as otherwise expressly provided in the body of the Code or by any law for the time being in force, from no other orders. The orders specified therein are:

[29] (2003) 10 SCC 361

> "(*ff*) an order under Section 35-A;
>
> (*ff-a*) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;
>
> (*g*) an order under Section 95;
>
> (*h*) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
>
> (*i*) any order made under rules from which an appeal is expressly allowed by rules:
>
> Provided that no appeal shall lie against any order specified in clause (*ff*) save on the ground that no order, or an order for the payment of a less amount, ought to have been made."

17. It is not disputed that Section 299 of the Act expressly provides for an appeal to the High Court. The right of appeal, therefore, is not conferred under Section 104 of the Code of Civil Procedure. The words "save as expressly provided by any other Act" were inserted in the said provisions in 1908 having regard to difference of opinions rendered in the judgments of various High Courts as regards the applicability of Letters Patent. The High Courts of Calcutta, Madras and Bombay following the decisions of the Privy Council in *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi* [ILR (1883) 9 Cal 482 : 10 IA 4 (PC)] held that Section 588 of the Code of Civil Procedure, as it then stood, did not take away the jurisdiction of clause 15 of the Letters Patent whereas the Allahabad High Court in *Banno Bibi* v. *Mehdi Husain* [ILR (1889) 11 All 375 : (1889) 9 AWN 70] held to the contrary. The said words were, therefore, added in the 1908 Act to give effect to the Calcutta, Madras and Bombay High Courts' decisions.

18. Had the intention of the legislature been that an appeal under Section 299 would be governed by the provisions of the Code of Civil Procedure, the legislature could have used the language as has been done in Section 28 of the Hindu Marriage Act providing that all decrees and orders passed under the Act "may be appealed from under any law for the time being in force".

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20. By reason of Section 104 of the Code of Civil Procedure the bar of appeal under a special statute is saved. A plain reading of

Section 104 of the Code of Civil Procedure would show that an appeal shall lie from an appealable order and no other order save as otherwise expressly provided in the body of this Code or by any law for the time being in force. Section 104 of the Code merely recognises appeals provided under special statute. It does not create a right of appeal as such. It does not, therefore, bar any further appeal also, if the same is provided for under any other Act, for the time being in force. Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure.

21. If a right of appeal is provided for under the Act, the limitation thereof must also be provided therein. A right of appeal which is provided under the Letters Patent cannot be said to be restricted. Limitation of a right of appeal, in the absence of any provision in a statute cannot be readily inferred. It is now well settled that the appellate jurisdiction of a superior court is not taken as excluded simply because the subordinate court exercises its special jurisdiction. In *G.P. Singh's Principles of Statutory Interpretation*, it is stated:

> "The appellate and revisional jurisdiction of superior courts is not taken as excluded simply because the subordinate court exercises a special jurisdiction. The reason is that when a special Act on matters governed by that Act confers a jurisdiction to an established court, as distinguished from a *persona designata*, without any words of limitation, then, the ordinary incident of procedure of that court including any general right of appeal or revision against its decision is attracted."

22. But an exception to the aforementioned rule is on matters where the special Act sets out a self-contained code, the applicability of the general law procedure would be impliedly excluded. (See *Upadhyaya Hargovind Devshanker* v. *Dhirendrasinh Virbhadrasinhji Solanki* [(1988) 2 SCC 1 : AIR 1988 SC 915 : (1988) 2 SCR 1043] .)

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37. Sub-section (2) of Section 104 of the Code of Civil Procedure provides that no appeal shall lie from any order passed in appeal under "this section". This also shows that if appeal is provided for under any other law, Section 104 of the Code of Civil Procedure would have no application."

50. An identical question arose for consideration of five learned Judges of the Supreme Court in *P.S. Sathappan*. The proceedings in *P.S. Sathappan,* arose out of certain orders passed by the civil court while dealing with proceedings relating to execution. Noticing the provisions of Section 104 of the Code, the Supreme Court made the following pertinent observations: -

> "**22.** Thus the unanimous view of all courts till 1996 was that Section 104(1) CPC specifically saved letters patent appeals and the bar under Section 104(2) did not apply to letters patent appeals. The view has been that a letters patent appeal cannot be ousted by implication but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation. The express provision need not refer to or use the words "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.
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> **** **** ****
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> **29.** Thus, the consensus of judicial opinion has been that Section 104(1) of the Civil Procedure Code expressly saves a letters patent appeal. At this stage it would be appropriate to analyse Section 104 CPC. Sub-section (1) of Section 104 CPC provides for an appeal from the orders enumerated under sub-section (1) which contemplates an appeal from the orders enumerated therein, as also appeals expressly provided in the body of the Code or by any law for the time being in force. Sub-section (1) therefore contemplates three types of orders from which appeals are provided, namely,
>
> (*1*) orders enumerated in sub-section (1),
>
> (*2*) appeals otherwise expressly provided in the body of the Code, and
>
> (*3*) appeals provided by any law for the time being in force.
>
> It is not disputed that an appeal provided under the Letters Patent of the High Court is an appeal provided by a law for the time being in force.
>
> **30.** As such if an appeal is expressly saved by Section 104(1), sub-section (2) cannot apply to such an appeal. Section 104 has to be

read as a whole. Merely reading sub-section (2) by ignoring the saving clause in sub-section (1) would lead to a conflict between the two sub-sections. Read as a whole and on well-established principles of interpretation it is clear that sub-section (2) can only apply to appeals not saved by sub-section (1) of Section 104. The finality provided by sub-section (2) only attaches to orders passed in appeal under Section 104 i.e. those orders against which an appeal under "any other law for the time being in force" is not permitted. Section 104(2) would not thus bar a letters patent appeal. Effect must also be given to legislative intent of introducing Section 4 CPC and the words "by any law for the time being in force" in Section 104(1). This was done to give effect to the Calcutta, Madras and Bombay views that Section 104 did not bar a Letters Patent. As appeals under "any other law for the time being in force" undeniably include a letters patent appeal, such appeals are now specifically saved. Section 104 must be read as a whole and harmoniously. If the intention was to exclude what is specifically saved in sub-section (1), then there had to be a specific exclusion. A general exclusion of this nature would not be sufficient. We are not saying that a general exclusion would never oust a letters patent appeal. However, when Section 104(1) specifically saves a letters patent appeal then the only way such an appeal could be excluded is by express mention in Section 104(2) that a letters patent appeal is also prohibited. It is for this reason that Section 4 of the Civil Procedure Code provides as follows:

> "4. *Savings*.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.
>
> (2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land."

As stated hereinabove, a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent. But where there is an express saving in the statute/section itself, then general words to the effect that "an

appeal would not lie" or "order will be final" are not sufficient. In such cases i.e. where there is an express saving, there must be an express exclusion. Sub-section (2) of Section 104 does not provide for any express exclusion. In this context reference may be made to Section 100-A. The present Section 100-A was amended in 2002. The earlier Section 100-A, introduced in 1976, 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 other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal."

It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided. After 2002, Section 100-A 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."

To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal.

31. Applying the above principle to the facts of this case, the appeal under clause 15 of the Letters Patent is an appeal provided by a law for the time being in force. Therefore, the finality

contemplated by sub-section (2) of Section 104 did not attach to an appeal passed under such law.

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33. It was also sought to be argued that if such be the interpretation of Section 104 CPC, it may create an anomalous situation and may result in discrimination inasmuch as an appeal under the Letters Patent will be available against an order passed by the High Court on its original side, whereas such an appeal will not be available in a case where the order is passed by the High Court in its appellate jurisdiction. A similar argument was urged before this Court in *South Asia Industries (P) Ltd.* [AIR 1965 SC 1442 : (1965) 2 SCR 756] but the same was repelled in the following words: (SCR p. 762 C-G)

> "The argument that a combined reading of clauses 10 and 11 of the Letters Patent leads to the conclusion that even the first part of clause 10 deals only with appeals from courts subordinate to the High Court has no force. As we have pointed out earlier, clause 11 contemplates conferment of appellate jurisdiction on the High Court by an appropriate legislature against orders of a tribunal. Far from detracting from the generality of the words 'judgment by one Judge of the said High Court', clause 11 indicates that the said judgment takes in one passed by a Single Judge in an appeal against the order of a tribunal. It is said, with some force, that if this construction be accepted, there will be an anomaly, namely, that in a case where a Single Judge of the High Court passed a judgment in exercise of his appellate jurisdiction in respect of a decree made by a court subordinate to the High Court, a further appeal to that Court will not lie unless the said Judge declares that the case is a fit one for appeal, whereas, if in exercise of his second appellate jurisdiction, he passed a judgment in an appeal against the order of a tribunal, no such declaration is necessary for taking the matter on further appeal to the said High Court. If the express intention of the legislature is clear, it is not permissible to speculate on the possible reasons that actuated the legislature to make a distinction between the two classes of cases. It may be, for ought we know, the legislature thought fit to impose a limitation in a case where 3 courts gave a decision, whereas it did not think fit to impose a limitation in a case where only one court gave a decision."

> **34.** We find ourselves in respectful agreement with the reasoning of this Court in the aforesaid decision. The same reasoning would apply in respect of the submission that if it is held that Section 104(2) did not bar a letters patent appeal an anomalous situation would arise inasmuch as if the matter were to come to the High Court a further appeal would be permitted but if it went to the District Court a further appeal would not lie. An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that. A District Court cannot be compared to a High Court which has special powers by virtue of Letters Patent. The District Court does not get a right to entertain a further appeal as it does not have "any law for the time being in force" which permits such an appeal. In any event we find no provisions which permit a larger Bench of the District Court to sit in appeal against an order passed by a smaller Bench of that Court. Yet in the High Court even, under Section 104 read with Order 43 Rule 1 CPC, a larger Bench can sit in appeal against an order of a Single Judge. Section 104 itself contemplates different rights of appeals. Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2). We see nothing anomalous in such a situation. Consequently the plea of discrimination urged before us must be rejected."

51. While the Constitution Bench did notice and bear in consideration the introduction of Section 100-A in the Code, it also took into consideration the seminal fact that the letters patent appeal in the said case had come to be preferred at a time when Section 100-A and Section 104(2) of the Code had not barred a letters patent appeal. It was thus held that Section 104 of the Code had clearly saved letters patent appeals and consequently it could not be said that such an appeal avenue stood ousted. *P.S. Sathappan* principally rested on

Section 104(2) of the Code as it existed on the statute book at the time when the appeals had been preferred.

52. That takes us then to a decision rendered by a Division Bench of this Court in *Satish Chander Sabharwal*. The said judgment dealt with the question whether a letters patent appeal would lie against a judgment rendered by a Single Judge while exercising appellate jurisdiction in respect of an order passed by the civil court in probate proceedings. Taking note of the introduction of Section 100-A of the Code, the Division Bench held as follows:

> "**7.** The aforesaid provision has been relied upon to contend that an appeal is to lie from the orders stipulated in sub-section (1) of Section 104 and not from any other order, but the same is qualified "by any law for the time being in force". It is, thus, submitted that Letters Patent Appeal would be maintainable in view of the provisions contained in the Letters Patent.
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> **9.** In *Garikapati Veeraya* v. *N. Subbiah Choudhry & Ors.*, AIR 1957 S.C. 540, it was held that the right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of filing of appeal. It was, however, further clarified that this vested right of appeal can be taken away only by subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.
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> **** **** ****
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> **17.** The last judgment to be referred to in this behalf is in the case of *P.S. Sathappan (Dead) By L.R.s* v. *Andhra Bank Ltd. & Ors.*, 2004 (8) SCALE 601. It may, however, be noticed that the appeal decided by the Supreme Court was against the judgment of the High Court dated 22.08.1997 whereby it was held that the Letters

> Patent Appeal is not maintainable against an order passed by the single Judge of the High Court sitting in appellate jurisdiction. Thus, the position prior to the amendment of Section 100A would prevail. In such a case, Section 104 of the Code would save the Letters Patent Appeal since out of the three types of orders from which appeals are provided in sub-section (1) of Section 104, the Letters Patent Appeal would fall in the category of appeals provided by any law for the time being in force. There are certain observations which are material even for the present controversy. In para 30 of the judgment while discussing the issue arising from the provisions of Section 100A after the amendment, it was observed that when the Legislature wanted to exclude a Letters Patent Appeal, it specifically did so by the said amendment to Section 100A. This was so since the Legislature was aware that it had incorporated a saving clause in Section 104(1) and incorporated Section 4 in the Code, but for the specific exclusion of the particular wording of the amendment to Section 100A, Letters Patent Appeal would not be barred. The Supreme Court went on to observe that the Legislature had provided for a specific exclusion and, thus, it must be stated that now by virtue of Section 100A, no Letters Patent Appeal would be maintainable.
>
> **18.** In view of the aforesaid legal position, we are of the considered view that in view of the amendment to the provision of Section 100A of the Code, no Letters Patent Appeal would now be maintainable from the orders passed by learned single Judge in first appeal being an appealable order, which in turn arose out of the proceedings initiated under Section 299 of the said Act. We have, thus, no option, but to dismiss the appeal as not maintainable."

53. It becomes pertinent to note that in *Satish Chander Sabharwal* the Division Bench of our Court had an occasion to notice both *Subal Paul* as well as *P.S. Sathappan*. However, it is important to bear in mind that the issue itself arose in the context of proceedings which were laid before the civil court under the Indian Succession Act, 1925. Section 299 of the said enactment provides for appeals being preferred from orders passed by a District Judge to a High Court in accordance

with the provisions of the Code. The proceedings which were instituted before the Single Judge not only emanated from a cause which was originally laid before a civil court, the appellate provision itself mandated that those appeals would be governed by the Code. Viewed in that light it is manifest that Section 299 of the Indian Succession Act, 1925 was similar to Section 76(3) and Section 109(8) of the 1940 TM Act and 1958 TM Act, respectively.

54. While it was not the contention of the respondents that the Registrar while exercising powers under the 1999 TM Act is a court what was sought to be urged for our consideration was that the enactment enables the Registrar to exercise various powers which are otherwise conferred by the Code and are available to be exercised by a civil court. It was in the aforesaid backdrop that Mr. Anand had submitted that the trappings test must be deployed and the bar created by Section 100-A of the Code be recognized to apply. The distinction between a civil court and courts or tribunals in general, was succinctly enunciated by the Supreme Court in *Nahar Industrial Enterprises*. While dealing with the said question, the Supreme in *Nahar Industrial Enterprises* pertinently observed as follows:

> "**69.** Civil court is a body established by law for administration of justice. Different kinds of law, however exist, constituting different kinds of courts. Which courts would come within the definition of the civil court has been laid down under the Code of Civil Procedure itself. Civil courts contemplated under Section 9 of the Code of Civil Procedure find mention in Sections 4 and 5 thereof. Some suits may lie before the Revenue Court, some suits may lie before the Presidency Small Cause Courts. The Code of Civil

Procedure itself lays down that the Revenue Courts would not be courts subordinate to the High Court.

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71. Civil courts are constituted under statutes, like the Bengal, Agra and Assam Civil Courts Act, 1887. Pecuniary and territorial jurisdiction of the civil courts are fixed in terms thereof. Jurisdiction to determine subject-matter of suit, however, emanates from Section 9 of the Code. We would revert to the interpretation of the said provision vis-à-vis the provisions of the Act a little later.

72. In *P. Sarathy* v. *SBI* [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] this Court opined that although there exists a distinction between a court and a civil court, but held that a tribunal which has not merely the trappings of a court but has also the power to give a decision or a judgment which has finality and authoritativeness will be court within the meaning of Section 14 of the Limitation Act, 1963. In the context of Section 29(2) of the Limitation Act, 1963 the term "court" is considered to be of wide import. However, there again even for that purpose exists a distinction between a court and the civil court. In *P. Sarathy* v. *SBI* [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] this Court has held: (SCC pp. 360-61, paras 12-13)

> "*12*. It will be noticed that Section 14 of the Limitation Act does not speak of a 'civil court' but speaks only of a 'court'. It is not necessary that the court spoken of in Section 14 should be a 'civil court'. Any authority or tribunal having the trappings of a court would be a 'court' within the meaning of this section.
>
> *13*. … in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a Judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

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83. Reliance has also been placed on a decision of this Court in *Rajasthan SRTC* [(1997) 6 SCC 100] wherein a Motor Accidents Claims Tribunal was held to be a civil court purporting to be on the basis of a decision in *Bhagwati*

Devi [1983 ACJ 123 (SC)] wherein the principles contained in Order 23 of the Code had been held to be applicable to the Motor Accidents Claims Tribunal. A provision in the Code which is benevolent in character and subserves the social justice doctrine in a situation of that nature has been applied, but the same, in our opinion, by itself would not make a Tribunal a civil court. No reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 of the Act.

84. The Court in *Rajasthan SRTC case* [(1997) 6 SCC 100] appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 of the Motor Vehicles Act, 1988 from an award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. The Motor Accidents Claims Tribunal, thus, is a court subordinate to the High Court. No appeal against the judgment of the Debts Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are differently structured and have been established to serve totally different purposes.

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89. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a fullfledged trial in terms of the provisions of the Code of Civil Procedure and/or the Evidence Act. It is now trite law that jurisdiction of a court must be determined having regard to the purpose and object of the Act. If Parliament, keeping in view the purpose and object thereof thought it fit to create separate Tribunal so as to enable the banks and the financial institutions to recover the debts expeditiously wherefor the provisions contained in the Code of Civil Procedure as also the Evidence Act need not necessarily be resorted to, in our opinion, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be conferred upon it so as to enable this Court to transfer the case from the civil court to a tribunal.

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92. We have held that the Tribunals are neither civil courts nor courts subordinate to the High Court. The High Court ordinarily can be approached in exercise of its writ

> jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India. The High Court exercises such jurisdiction not only over the courts but also over the Tribunals. The Appellate Tribunals have been constituted for determining the appeals from judgments and orders of the Tribunal."

55. Mr. Sibal had at the outset contended that the fact that the Registrar cannot be construed to be a court stands conclusively settled in light of the decision of the Bombay High Court in *The Anglo French Drug Co.* and the Supreme Court in *Khoday Distilleries*. It was submitted that even when the tests as formulated in *Nahar Industrial Enterprises* were to be borne in mind, it would be manifest that the Registrar of Trade Marks would not fulfill the trappings test. Reliance was additionally placed by Mr. Sibal on the judgment in *Paramjeet Singh Patheja* where the Supreme Court had observed as follows:-

> "**12.** The substantial questions of law of paramount importance to be decided by this Court are:
>
> (*i*) Whether an arbitration award is a "decree" for the purpose of Section 9 of the Presidency Towns Insolvency Act, 1909?
>
> (*ii*) Whether an insolvency notice can be issued under Section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an arbitration award?
>
> **** **** ****
>
> **20.** Sections 2(2) and 2(14) CPC define what "decree" and "order" mean. For seeing whether a decision or determination is a decree or order, it must necessarily fall in the language of the definition. Section 2(2) CPC defines "decree" to mean "the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in

controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include—

(*a*) any adjudication from which an appeal lies as an appeal from an order, or

(*b*) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

21. The words "court", "adjudication" and "suit" conclusively show that only a court can pass a decree and that too only in a suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the court. It is obvious that an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree.

22. Section 2(14) defines "order" to mean

"the formal expression of any decision of a civil court which is not a decree".

23. The words "decision" and "civil court" unambiguously rule out an award by arbitrators.

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25. In *Ramshai* v. *Joylall* [AIR 1928 Cal 840 : 32 CWN 608] the Calcutta High Court held as follows: (AIR p. 840)

(*a*) *Presidency Towns Insolvency Act, Section 9(e) — Attachment in execution of award is not one in execution of a decree.*

Attachment in execution of an award is not attachment in the execution of a decree within the meaning of Section 9(*e*) for the purpose of creating an act of insolvency: *Re, Bankruptcy Notice* [(1907) 1 KB 478 : 76 LJ KB 171 : 96 LT 131 (CA)] , *ref.*

(*b*) *Arbitration Act, Section 15 — Award.*

An award is a decree for the purpose of enforcing

that award only."

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28. It is settled by decisions of this Court that the words "*as if*" in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.

29. Section 36 of the Arbitration and Conciliation Act, 1996 which is in *pari materia* with Section 15 of the 1899 Act, is set out hereinbelow:

> "36. *Enforcement.*—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, *the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court.*"
>
> (emphasis supplied)
>
> In fact, Section 36 goes further than Section 15 of the 1899 Act and makes it clear beyond doubt that enforceability is only to be under CPC. It rules out any argument that enforceability as a decree can be sought under any other law or that initiating insolvency proceeding is a manner of enforcing a decree under CPC. Therefore the contention of the respondents that, an award rendered under the Arbitration and Conciliation Act, 1996 if not challenged within the requisite period, the same becomes final and binding as provided under Section 35 and the same can be enforced as a decree as it is as binding and conclusive as provided under Section 36 and that there is no distinction between an award and a decree, does not hold water."

56. From the various decisions which were cited for our consideration, we find that those can be classified as principally falling into three streams. On one hand, we have precedents which were rendered in the backdrop of provisions contained in special enactments, while on the other side of the spectrum were decisions

which emanated from proceedings governed by the Code. The judgments in *Kamal Kumar Dutta, Gandla Pannala Bhulaxmi, United India Insurance*, *Rouf Ahmad Zaroo, Geeta Devi, Anshuman Shukla and Kesava Pillai* dealt with the question of maintainability of letters patent appeal and where proceedings had been originally instituted in terms of provisions made in special enactments. *Kamal Kumar Dutta* was dealing with an original order which had been passed by the erstwhile Company Law Board. In *Gandla Pannala Bhulaxmi* the Full Bench of the Andhra Pradesh High Court was called upon to answer an identical question in the backdrop of proceedings which originated from a Motor Accident Claims Tribunal. The same was the position in *United India Insurance*. The decision of the Division Bench of Jammu & Kashmir High Court in *Rouf Ahmad Zaroo* dealt with the maintainability of a letters patent appeal and in the context of proceedings which had been initially instituted before an Additional District Judge under the provisions of the Guardians and Wards Act, 1890. *Mohd. Saud, Vasanthi, Metro Tyres* and *N.G. Nanda* on the other hand were decisions which came to be rendered in the backdrop of proceedings having been originally instituted before the civil court itself.

57. The aforenoted set of judgments would thus clearly appear to be distinguishable for the following reasons. Insofar as those cases which arose from proceedings under the Code, they would undoubtedly be covered by Section 100A since they would represent decrees or orders

passed by a civil court. The other set of precedents relate to matters which were decided by a civil court albeit in exercise of jurisdiction conferred by a special statute. We have another body of precedents which deal with matters originally decided by tribunals which were deemed to be courts for purposes specified therein.

58. In *Kamal Kumar Dutta* the Supreme Court came to conclude that Section 100-A of the Code would bar a further appeal in terms of a letters patent provision since it found that while the erstwhile Company Law Board may not be a court it had all the trappings thereof. We in this regard bear in mind the provisions of Section 10E (4D) of the Companies Act, 1956, which had ordained that all proceedings before the Company Law Board would be deemed to be judicial proceedings albeit for the limited purposes indicated therein. We note that similar is the position which prevails under the Motor Vehicles Act, 1988 with Section 169 thereof, prescribing that the Motor Vehicle Claims Tribunal shall be deemed to be a civil court for purposes enumerated therein. It is also relevant to note that the Intellectual Property Appellate Board[30], as it existed prior to the promulgation of the Tribunals Reforms Act, 2021 had been clothed with an identical status by virtue of Section 92. The decisions that thus came to be rendered in *Kamal Kumar Dutta, Gandla Pannala Bhulaxmi, Rouf Ahmad Zaroo* and *United India Insurance* all emanated from special statutes with a deeming provision. The

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decision of the Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai* arose out of proceedings instituted under the Land Acquisition Act, 1894 and the Motor Vehicles Act, 1988 whose distinguishing characteristics have already been explained hereinabove.

59. We note further that in *Mohd. Saud,* the question of whether a letters patent appeal would be maintainable arose out of an interim order passed by the Additional District Judge while considering a civil suit. The appeal before the Single Judge was taken in terms of the provisions made in Order 43 Rule 1 of the Code. Similarly, in *Vasanthi* the issue which fell for consideration emanated from an order passed by the subordinate Judge while trying an original suit. In *Metro Tyres* the Division Bench of this High Court was called upon to answer the question of maintainability of a letters patent appeal in the backdrop of an order passed by the Single Judge who had dealt with an appeal preferred against the decision of the Additional District Judge rejecting an application for restoration of an original suit and holding that it had already abated. An identical position prevailed in the matter of *N.G. Nanda*. There too the Single Judge had heard and decided an appeal against an order passed by the trial Judge disallowing an application for setting aside the abatement of original suit proceedings. That then takes us to consider the view as expressed by the Full Bench of our Court in *Avtar Narain Behal*.

60. However, and before we proceed to consider the decision handed down by the Full Bench of this Court in *Avtar Narain Behal*, it would be apposite to notice two recent decisions which were rendered in the context of the 1999, TM Act and whether a Letters Patent Appeal would lie against a judgment rendered by a learned Judge while entertaining an appeal under the aforesaid statute. The question firstly fell for consideration of a Division Bench of this Court in **Resilient Innovations Pvt. Ltd. vs. Phonepe Private Limited and Anr.**[31]. While Section 100-A of the Code was not adverted to, the Court in *Resilient Innovations Pvt. Ltd.,* did have an occasion to notice Section 76 of the 1940 TM Act as well as Section 109(5) of the 1958 TM Act. The Court in *Resilient Innovations Pvt. Ltd.* went on to make the following pertinent observations in this regard:

> "25. At this stage we may note that an intra-court appeal in this court would, broadly, fall into four slots. **[See *C.S. Aggarwal v State & Ors.* and *Jaswinder Singh*]**.
>
> (i) First, Appeals, which are available under the CPC.
>
> (ii) Second, where the provision of appeal is made in a given statute.
>
> (iii) Third, appeals available under Section 10 of the DHC Act, in respect of judgements which are rendered by a Single Judge in the exercise of ordinary original civil jurisdiction, as construed under Section 5(2) of the very same Act. Thus, an appeal under this provision i.e., Section 10(1) of the DHC Act would be available where a Single Judge passes an order while exercising ordinary original civil jurisdiction, which is otherwise not available under Section 104 read with Order 43 Rule 1 of the CPC, as long as it meets the test of "judgement" as enunciated in ***Babulal Khimji***.

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(iv) Lastly, appeals available under Clause 10 of the Letters Patent.

25.1 In the instant case, RIPL has slotted its appeal in the last category i.e., Clause 10 of the Letters Patent. The reason is quite clear; the first three slots would not apply as the learned Single Judge was not exercising ordinary original civil jurisdiction; there is no provision in the CPC for maintaining this appeal and the 1999 (Amended) TM Act does not provide for an appeal.

25.2 PPL, on the other hand, has, inter alia, emphasized that because of the history of trademark legislation, the exclusion of an intra-court appeal provision is implied.

25.3 We tend to disagree. To our minds, there is nothing in the framework of the 1999 TM Act which suggests that the legislature, by implication, sought to exclude one level of scrutiny that would be available by way of an intra-court appeal preferred under Clause 10 of the Letters Patent. Concededly, there is no provision in the 1999 (Amended) TM Act, which expressly excludes the applicability of the provision for appeal provided under Clause 10 of the Letters Patent.

26. The question that then arises is: whether the fact that there is no provision with regard to the applicability of the provisions of CPC would make any difference to the conclusion that we have reached in the matter?

26.1 In this context, it is to be noticed that in the National Sewing Thread case, when the Supreme Court was called upon to rule on whether an intra-court appeal would lie under Clause 15 of the Letters Patent, as applicable to the Gujrat High Court, the decision on the maintainability of the intra-court appeal did not turn on the provisions of sub-section (3) of Section 76 of the 1940 TM Act, which provided that the provisions of the CPC would apply to the appeals preferred to the High Court under the Act.

26.2 Clearly, in Sub-section (3) of Section 76 of the said Act and in Sub-section (8) of Section 109 of the 1958 TM Act, provide for the application of the provisions of CPC. A plain reading of the said provisions would show that the CPC applies to appeals preferred with the High Court under the respective statute.

26.3 An appeal under the Letters Patent (in this case, Clause 10), however, in an appeal under a special law, and not an appeal under the Act. Therefore, the absence of a similar provision under the 1999 (Amended) TM Act would have, in our opinion, no impact on the sustainability of the instant appeals."

61. *Resilient Innovations Pvt. Ltd.,* significantly noticed that both Section 76(3) of the 1940 TM Act as well as Section 109(8) of the 1958 TM Act had envisaged the application of the provisions of the Code. It, however, held that since an appeal under the Letters Patent and therefore one which is preferred under a special law as opposed to an appeal that may have been provisioned under the 1999 TM Act, in the absence of similar provisions having been adopted in the latter legislation, the remedy of an intra-court appeal would not be impacted. A doubt was raised with respect to the correctness of the enunciation of the legal position in **V.R. Holdings vs. Hero Investocorp Limited & Anr.**[32]. The aforesaid objection was taken and was based on the premise that *Resilient Innovations Pvt. Ltd.* had failed to either notice or consider Section 13 of the Commercial Courts Act, 2015. It was on that basis that it was contended by the respondents in *V.R. Holding* that the decision in *Resilient Innovations Pvt. Ltd.,* merited reconsideration or reference to a larger Bench.

62. The aforesaid objection was negatived with the Court in *V.R. Holdings,* finding that Section 13 of the Commercial Courts Act, 2015 would have applied in a situation where the Single Judge may have been exercising ordinary original civil jurisdiction. The Court found that since the Single Judge in that case was dealing with a petition referable to Section 57 of the 1999 TM Act, it could not be said to be exercising original jurisdiction and consequently the restrictions as

[32] 2023 SCC OnLine 4673

imposed by Section 13 of the Commercial Courts Act, 2015, would have no application.

63. Reverting to *Avtar Narain Behal***,** we find that the subject matter of the said decision were proceedings which had been initiated before a District Judge under the Indian Succession Act, 1925 and which had then proceeded to see the filing of an appeal before a Single Judge of this Court in terms of Section 299 thereof. It is pertinent to note at this stage that Section 299 of the Indian Succession Act, 1925, also imported the provisions of the Code to such an appeal and thus stood on an identical plane as Section 76 (3) of the 1940 TM Act and Section 109(8) of the 1958 TM Act. The Full Bench of our Court in *Avtar Narain Behal*, upon due consideration ultimately came to hold that the decisions of the Supreme Court in *Subal Paul* and *P.S. Sathappan***,** were authoritative pronouncements on the letters patent power being taken away by an appropriate legislative measure. The Court in *Avtar Narain Behal* also read and interpreted *Kamal Kumar Dutta,* as being an authority for the proposition that a letters patent appeal against a decision rendered by a Single Judge in an appeal arising under a special statute would be barred by Section 100-A of the Code. Further, it was observed that the non-obstante clause as embodied in Section 100-A of the Code was a clear indication of the intent of the Legislature to completely bar an LPA which may be preferred against a judgment rendered by a Single Judge in an appeal arising from an original or appellate decree or order. The Full Bench

went on further to hold that the language of Section 100-A of the Code cannot be construed as restricting the exclusion of the right of appeal under the Letters Patent only to matters arising under the Code and not under other enactments.

64. In order to discern the true ratio decidendi of *Avtar Narain Behal*, it must be at the outset be noted that the principal proceedings arose out of the Indian Succession Act, 1925. It would therefore be Section 299 which would apply and which in clear and unambiguous terms provides that appeals to the High Court would be *"in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals"*. This was the identical position which prevailed in *Satish Chander Agarwal*. The Full Bench was thus called upon to consider whether the remedy of an LPA would be available once the Single Judge had acted in terms of the appellate jurisdiction conferred. However and is manifest from a plain reading of Section 299, the avenue of appeal was made subject to the provisions of the Code dealing with appeals. Section 100A thus clearly applied. This was therefore not a case where the special statute merely provisioned for an appeal and left it at that. In such situations, as the Supreme Court had explained in *National Sewing Thread*, once the appeal entered the portals of the High Court it would be the applicable rules which would govern the fate of such an appeal including the issue of whether an LPA would be maintainable. Neither Section 91 nor any other provision of the 1999 TM Act stipulates that no further appeal

would lie or that an appeal when preferred would be governed by the provisions of the Code insofar as they relate to appeals.

65. The observations in *Avtar Narain Bahel* relating to the applicability of Section 100A to appeals emerging from special enactments would have to be appreciated in the context of Section 299 of the Indian Succession Act, 1925 and which was undoubtedly a special enactment. Additionally, we would hold that those observations would also hold good where the special statute commands the route of appeals to be governed and regulated by the provisions of the Code. We also bear in mind the principles which were enunciated in *Mahli Devi*, an earlier Full Bench of this Court, which had in the context of Section 54 of the Land Acquisition Act, 1894 observed:-

> "**12.** What follows from the aforesaid discussion of the relevant provisions of law and the judicial pronouncements on the subject is that unless a statute itself bars a second appeal in the High Court or makes the judgment of a Single Judge of the High Court final (as in case of Section 43, Delhi Rent Control Act), the Letters Patent appeal will lie from a judgment of the Single Judge of the High Court to the Division Bench of the Court. Section 54 of the Act does not contain any such bar and, therefore, an appeal under clause 10 of the Letters Patent will be maintainable. Here we may notice a judgment of the Supreme Court in *National Sewing Thread Co. Ltd.* v. *James Chadwick & Bros*, reported in AIR 1953 SC 357. The Court was considering the question on the basis of Section 76 of Trade Marks Act. Under the said Section appeal lies to the High Court. The question was whether the decision of the High Court would be a judgment for purposes of considering its appealability under the Letters Patent. It was observed "ordinarily after an appeal reaches the High Court, it has to be determined according to the rules or practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is

> constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Thus, Section 76, Trade Marks Act, confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76. It has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act.
>
> **13.** These observations totally put to rest the entire controversy. Once the appeal comes to this Court rest of the proceedings will be in accordance with the rules of practice and procedure of this Court and in accordance with the provisions of the Charter, i.e. the Letters Patent. The only exception will be when a statute specifically bars such an appeal. As already noticed the statute in this case, i.e., Section 54 of the Act does not contain any specific bar to the right of second appeal. It follows that the second appeal under the Letters Patent, will be available to the party concerned."

66. When reconciling the position in law as enunciated in *Mahli Devi* with *Avtar Narain Behal* it would be apparent that the letters patent remedy would stand taken away either when the special statute itself bars a second appeal or where the said enactment provides that the appeal to the High Court would abide by the provisions in the Code dealing with appeals.

67. The principles which govern the discernment of the ratio decidendi of a judgment were lucidly explained by the Constitution Bench of the Supreme Court in **National Resources Allocation, In re Special Reference No. 1 of 2012**[33] where D.K. Jain J. speaking for the majority held as follows:-

[33] (2012) 10 SCC 1

“70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in *The Nature of the Judicial Process*, had said that “if the Judge is to pronounce it wisely, some principles of selection there must be to guide him among all the potential judgments that compete for recognition” and “almost invariably his first step is to examine and compare them;” “it is a process of search, comparison and little more” and ought not to be akin to matching “the colors of the case at hand against the colors of many sample cases” because in that case “the man who had the best card index of the cases would also be the wisest Judge”. Warning against comparing precedents with matching colours of one case with another, he summarised the process, in case the colours do not match, in the following wise words:

> “It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the Judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon's: ‘For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow.’”

71. With reference to the precedential value of decisions, in *State of Orissa* v. *Mohd. Illiyas* [(2006) 1 SCC 275 : 2006 SCC (L&S) 122] this Court observed: (SCC p. 282, para 12)

> “*12*. … According to the well-settled theory of precedents, every decision contains three basic postulates: (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a

> decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

72. Recently, in *Union of India* v. *Amrit Lal Manchanda* [(2004) 3 SCC 75 : 2004 SCC (Cri) 662] this Court has observed as follows: (SCC p. 83, para 15)

> "*15.* … Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

73. It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case. Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact. In this regard, in *Islamic Academy of Education* v. *State of Karnataka* [(2003) 6 SCC 697] , this Court made the following observations: (SCC p. 719, para 2)

> "2. … The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

68. The importance of bearing in mind the facts in the context of which a judgment may have come to be rendered was duly

emphasised by the Supreme Court in **State of M.P. Vs. Narmada Bachao Andolan**[34] in the following words:-

> "**64.** The court should not place reliance upon a judgment without discussing how the *factual situation fits* in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the *material facts* and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some *distinguishing features*. A little difference in *facts or additional facts* may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in *setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases*. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide *MCD* v. *Gurnam Kaur* [(1989) 1 SCC 101 : AIR 1989 SC 38] , *Govt. of Karnataka* v. *Gowramma* [(2007) 13 SCC 482 : AIR 2008 SC 863] and *State of Haryana* v. *Dharam Singh* [(2009) 4 SCC 340 : (2011) 2 SCC (L&S) 112] .)"

69. The position may be summarised thus. From the various judgments which have been cited for our consideration and have been noticed hereinabove, those which had recognized Section 100-A of the Code as barring the avenue of an appeal which may otherwise be available in terms of the letters patent provisions, either originated from orders or judgments passed by the civil court or where it was the civil court which formed the principal tier of adjudication although it may have been exercising a jurisdiction otherwise conferred by a special enactment.

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[34] (2011) 7 SCC 639

70. Insofar as the judgments in *Gandla Pannala Bhulaxmi* and *United India Insurance* are concerned, those Full Benches had arisen from matters which had been originally placed before the Motor Accident Claims Tribunal. Insofar, as the position of Motor Accident Claims Tribunals is concerned, we find that in *Nahar Industrial Enterprises,* it has been doubted whether such a tribunal could be placed on the same pedestal as a civil court. In the aforesaid decision, the Supreme Court had further held that Debts Recovery Tribunal would also not be liable to be recognized as a civil court. All that can possibly be said with respect to a Motor Accident Claims Tribunal is the deeming provisions which are incorporated in the Motor Vehicles Act, 1988, which confers on them the powers of civil courts, albeit for the limited purposes specified therein.

71. However, it is apparent that none of the decisions which were cited for our consideration appear to have taken note of the definition of the words, "decree" or "order" as appearing in the Code. The word, "decree" has been defined in Section 2 (2) of the Code to mean the formal expression of an adjudication by a court which conclusively determines the rights of parties. Section 2(14) of the Code proceeds to define the word "*order*" to mean the formal expression of any decision of a civil court which is not a decree. Although, the phrase, "*civil court*" is not specifically defined, one can safely discern the meaning liable to be ascribed to it from Section 2(4) of the Code

which while defining the word "district" refers to the local limits of the jurisdiction of a principal civil court of original jurisdiction.

72. Undoubtedly, therefore, the word "order" wherever occurring in the Code would have to be understood bearing in mind Section 2(14) of the Code. Section 100-A of the Code proscribes the filing of a further appeal from a decision rendered by a Single Judge of a High Court where such a Singe Judge was hearing an appeal from an original or appellate decree or order. It would thus appear to mean that where a Single Judge of a High Court has considered an appeal arising from an original or appellate decree or order, no further appeal would lie. The restraint on a further appeal being available to be preferred is to operate notwithstanding anything contained in the Letters Patent of a High Court or any other law for the time being in force.

73. However, we find that when Section 100-A of the Code speaks of an original or appellate decree or order, it has to necessarily be understood in light of Section 2(14) of the Code which in unambiguous terms defines it to mean an order other than a decree, which amounts to a formal expression of a decision of a civil court. As we construe Section 100-A of the Code, it would appear to bar a second appeal only in a situation where a Single Judge had heard an appeal from a decree or order as defined in the Code. *Kamal Kumar Dutta* had found that the Company Law Board had all the trappings of a court and that consequently Section 100-A of the Code barring a

further appeal in terms of the Letters Patent. The Full Bench of the Andhra Pradesh High Court in *Gandla Pannala Bhulaxmi*, failed to notice that the Motor Accident Claims Tribunal is not a civil court, as also that 100-A of the Code and the bar of a further appeal as constructed in terms thereof would only apply to decrees or orders as defined by the Code. The larger Bench of the Andhra Pradesh High Court in *United India Insurance,* while concluding that Section 100-A of the Code could not be read as restricting a right of appeal only to matters arising under the Code also failed to either notice or consider Section 2(14) of the Code. The decisions in *Mohd. Saud, Vasanthi, Metro Tyres, N.G. Nanda* arose from matters which had been originally placed before the civil court.

74. The judgments noticed by us hereinabove and which have held and postulated that Section 100-A of the Code would bar the Letters Patent remedy have thus all come to be rendered either in respect of proceedings emanating from the Code, or proceedings where a civil court may have been the conferred authority under a special enactment and thus clearly stand on a distinct footing. Some of the decisions such as those rendered in the context of the Land Acquisition Act, 1894, the Indian Succession Act, 1925 or the Guardians and Wards Act, 1890 must necessarily be appreciated in light of the appellate provisions engrafted therein and which made such appeals subject to the provisions of the Code. There were other judgments which came

to be pronounced by tribunals or bodies which were by statutory fiction conferred the status of a court.

75. Reverting then to the facts which obtain in these appeals we find that undisputedly, the Registrar of Trade Marks is not a civil court. Even though some of the powers that are otherwise available with a civil court may be placed in its hands and be exercised by it, the same would not make it a civil court. We have no hesitation in holding that it would not qualify the test of "trappings of a court" in light of the decisions in *Anglo-French Drug Co.* and *Khoday Distilleries*. Section 91 of the 1999 TM Act does not prescribe the appellate remedy to be governed by the provisions of the Code. This as we have found above is a departure from Section 76 of the 1940 TM Act and Section 109 of the 1958 TM Act as well as Section 299 of the Indian Succession Act, 1925 on the basis of which the Full Bench came to rule and decide *Avtar Narain Behal*. All of the above would tend to indicate that the LPA against an order passed by a Single Judge while exercising the Section 91 power would not be barred.

76. While the Code could have undoubtedly barred the remedy available under a Letters Patent, its provisions would necessarily have to be read as being in relation to causes and appeals governed by it. We doubt that the provisions of Section 100A of the Code could be either stretched or interpreted as being intended to cover all appeals that may otherwise be presented or be available to be instituted in terms of provisions contained in special enactments. This subject of

course to the appellate provisions engrafted in those statutes and dependent upon whether further appeals are ordained to be governed by the provisions of the Code. Where the appellate provisions specifically subjects the right of appeal to provisions of the Code relating to appeals, Section 100 A would clearly apply and bar the remedy of an LPA.

77. Section 100A would appear to be aimed at eclipsing and shutting out the remedy of an intra court appeal which may otherwise be available under a Letters Patent when it comes to matters governed by the Code. As is evident from the Preamble of the Code itself, it seeks to consolidate the laws relating to procedure of "courts of civil judicature". The Letters Patent powers of High Courts were undoubtedly saved by virtue of Sections 4 and 104 of the Code. While that power could undoubtedly be taken away as was held in *Subal Paul* and *P.S. Sathappan*, it may be incorrect to view Section 100A as being an essay on the right or avenue of an appeal as provisioned for by statutes in general including those which may not even be concerned with decrees or orders of a civil court. The aforesaid would necessarily be subject to the caveat that where the special statute adopts the provisions of the Code and makes those applicable to appeals, the LPA remedy would stand taken away by virtue of Section 100A.

78. We would think that the intent of Section 100A would be confined to a second appeal when preferred against a judgment of a

Single Judge exercising appellate powers provided it pertained to a decree or order as defined by the Code. The bar would thus only operate where the decree or order against which the appeal was preferred before the Single Judge was of a civil court. We further note that Section 2(14) uses the expression "civil court" and not "court". It would thus be doubtful whether the "trappings of a court" test as generally formulated would have any application. However, even if we were to proceed on the basis that such a test could be justifiably invoked for the purposes of Section 100A, the Registrar of Trademarks would not qualify the standards as enunciated.

79. In addition to the above, the LPA remedy would also not be available where the special statute subjects the appeal remedy to follow the rules applicable to appeals and embodied in the Code. Once the appeal is made subject to the rules incorporated in the Code, all restrictions to an appeal including Section 100A would get attracted and attached. This since the appeal provision in such a case would be deemed to have consciously adopted all restrictions as put in place under the Code and would override the letters patent provision. This would be in line with the ratio decidendi of *Avtar Narain Behal*.

80. The Full Bench in *Avtar Narain Behal* had rejected the argument that Section 100A would be confined to matters arising out of the Code and that the exclusion would not apply to other enactments. This submission was correctly rejected since in terms of Section 299 the appeal shall be **"in accordance with the provisions**

of the Code of Civil Procedure, 1908, applicable to appeals. The provisions of Section 100A thus clearly stood attracted to such proceedings. Perhaps similar would have been the position in these matters if the 1999 TM Act had continued to carry provisions akin to Section 76 (3) of the 1940 TM Act or Section 109(8) of the 1958 TM Act. The appellate provision as it stands today does not mandate that the appeals avenue would be subject to or be governed by the provisions of the Code. In the absence of any such provision either regulating or restricting the right of appeal in Section 91 of the 1999 TM Act, the LPA remedy would not be barred by Section 100A of the Code and would be applicable.

81. Accordingly, and for all the aforesaid reasons, we negative the preliminary objection as raised. The appeals be consequently placed for consideration on 19.09.2023.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

SEPTEMBER 06, 2023
SU/rsk