

(1992) 10 MP CK 0002
Madhya Pradesh High Court
Case No: L. P. A. No. 22 of 1987 (G.)

Madan Lal and Others

APPELLANT

Vs

Daulat Ram and
Others

RESPONDENT

Date of Decision: Oct. 20, 1992

Acts Referred:

- Arbitration Act, 1940 - Section 39

Citation: (1993) 2 MPJR 236

Hon'ble Judges: S. K. Dubey, J; S. K. Chawla, J

Bench: Division Bench

Advocate: N. K. Jain, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. K. Dubey, J.

The appellants aggrieved of the order dated 23-7-1987, passed by a learned Single Judge of this Court in Miscellaneous Appeal No. 92/1975, filed u/s 39 of the Arbitration Act, 1940, for short, the "Act", preferred against the order dated 16-5-1975, passed by Second Additional District Judge, Gwalior, in Civil Suit No. 10-A; 1975, have preferred this appeal under Clause 10 of the Letters Patent of Madhya Pradesh High Court.

The appeal so preferred against the judgment and decree passed under S. 17 of the Act by the trial Court was partly allowed by the learned Single Judge, wherein the award in relation to two properties dealt with in para 8 of the Order was declared as invalid, while the rest of the award in respect of the other items of dispute was maintained with a direction to parties to take recourse to proceedings in accordance with law to establish their right, title and interest in relation to the two properties, of

which the award was declared as invalid.

Shri N. K. Jain, learned counsel for the appellants, was heard on maintainability of the appeal. Counsel placing reliance on a decision of the Supreme Court in case of [Shah Babulal Khimji Vs. Jayaben D. Kania and Another](#), contended that the Supreme Court while considering Clause 15 Of the Letters Patent of the Bombay High Court, which are pari materia to Clause 10 of the Letters Patent of M. P. High Court, has observed that where an appeal lies under any "special law" in the High Court against an order in such appeal, Letters Patent Appeal will lie as a "part of special jurisdiction."

Before we deal with the question, it be stated that it is a well settled principle of law that the right of appeal is not a natural and inherent right of a person in respect of any litigation, but the same is a creature of a statute, which governs and regulates the appeal. If the right of appeal does not exist and cannot be assumed unless expressly conferred by a statute or the rules having the force of a statute, no right of appeal would be available. This appeal arises out of an order passed in appeal preferred under S. 39 of the Act, which we reproduce

39. Appealable orders.--(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decree of the Court passing the orders :

An order-

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award :

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

The question directly came up for consideration before the Supreme Court in case of [Union of India \(UOI\) Vs. Mohindra Supply Company](#), wherein the Supreme Court, while considering Clause 10 of the Letters Patent of the Punjab High Court, which are pari materia to the provisions of CI. 10 of the Letters Patent of M. P. High Court,

and the right of appeal conferred under S. 39 of the Act, has observed in para 5 :

By this clause, a right to appeal except in the cases specified, from one Judge of the High Court to a Division Bench is expressly granted. But the Letters Patent are declared by Cl. 37 subject to the legislative power of the Governor-General in Council and also of the Governor-in-Council under the Government of India Act, 1915, and may in all respects be amended or altered in exercise of legislative authority. Under S. 39 (1), an appeal lies from the orders specified in that sub-section and from no others. The legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised Only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in S. 39 (1), a right to appeal from a judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that Cl. (2) does not similarly restrict the exercise of appellate power granted by the Letters Patent. If for reasons aforementioned the expression ""second appeal" includes an appeal under the Letters Patent, it would be impossible to hold that notwithstanding the express prohibition, an appeal under the Letters Patent from an order passed in appeal under sub-section (1) is competent.

In the same judgment the Supreme Court has also considered the effect of S. 4, CPC, and observed in para 17 thus :

There is in the Arbitration Act no provision similar to S. 4 of the CPC which preserves powers reserved to Courts under special statutes. There is also nothing in the expression "authorised by law to hear appeals from original decrees of the Court" contained in S. 39 (1) of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against orders passed in arbitration proceedings, they must be read subject to the provisions of S. 39 (1) and (2) of the Arbitration Act.

It was observed in para 18 that the right to appeal under the Letters Patent was saved by both Ss. 4 and the clause contained in S. 104 (1), CPC, but by the Act the jurisdiction of the Court under any other law for the time being in force is not saved and therefore, the right of appeal can be exercised against orders in arbitration proceedings only under S. 39, and no appeal, except an appeal to the Supreme Court, will lie from an appellate order.

Reliance of Shri Jain on Shah Babulal Khimji V case (supra) has no application in the present case, as in paras 33, 35 and 40 of Shah Babulal Khimji's case (supra) the Supreme Court observed that the provisions of S. 39 of the Act, which speaks of appealable orders, shall prevail in respect of an original order of a Single Judge in an arbitration proceeding and if that is appealable under S. 39 a Larger Bench of the High Court, may hear appeal meaning thereby that the appellate power has to be

exercised under the Letters Patent of the High Court in the manner and to such extent as may be provided in the Letters Patent, and not in accordance with the provisions contained in S. 4, CPC, as Letters Patent contemplate an intra-court appeal only and there is no provision like S. 4, CPC; therefore, no second appeal will lie from the appellate judgment passed by the learned Single Judge. This would also be clear from the observations made in para 40 of Shah Babulal Khimji's case (supra) which are thus :

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.

A Division Bench of this Court in case of Rajmata Vijaya Raje Scindia v. Maharaja Madhavrao Scindia 1988 MPLJ 78, after considering the provisions of Ss. 4 and 104, CPC, and the law laid down by the Supreme Court in Shah Babulal Khimji's case (supra) in respect of Letters Patent and the exercise by the High Court of original jurisdiction and appellate powers under different enactments, has observed that where in enactments like Motor Vehicles Act, the Workmen's Compensation Act an appeal is provided to High Court, even if the High Court Rules provide for such appeals being heard by a Single Judge, the judgment or order passed by such Judge in the exercise of appellate jurisdiction of the High Court will not create a right of second appeal merely because the Letters Patent contemplate an intra-court appeal. Once the appellate power contemplated under S. 30 of the Workmen's Compensation Act or S. 110-D of the Motor Vehicles Act is exhausted in appeal by a Single Judge or a Division Bench, as the case may be, the scope and extent of that power cannot be enlarged by Letters Patent.

Thus, from the above, it is clear that no second appeal would lie under Clause 10 of the Letters Patent against the appellate order of the Single Judge, except an appeal to the Supreme Court.

In the result, the appeal is dismissed as not maintainable. However, the appellants shall be free to take recourse to the proceedings as directed by the learned Single Judge in accordance with law.