(2009) 02 BOM CK 0132

Bombay High Court

Case No: Appeal (L) No. 678 of 2008 in Chamber Summons No. 2093 of 2007 in Suit No. 527 of 2005

The Great Eastern Shipping Company Limited		APPELLANT
	Vs	
Capt. Sukhdev Singh, an Indian Inhabitant, The Maritime Union of India (UOI) and Great Offshore Limited		RESPONDENT

Date of Decision: Feb. 20, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 43 Rule 1, 100A, 104, 104(1)
- Contempt of Courts Act, 1971 - Section 19
- Defence of India Act, 1971 - Section 2
- Government of India Act, 1915 - Section 107, 108, 71
- Limitation Act, 1963 - Section 10, 11, 12, 13, 14
- Specific Relief Act, 1963 - Section 6, 6(3)

Citation: (2009) 3 BomCR 268 : (2009) 111 BOMLR 1321

Hon'ble Judges: Swatanter Kumar, C.J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: Virendra Tulzapurkar, instructed by Hariani and Co, for the Appellant; Party-in-Person in Respondent No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, C.J.

The Appellant before this Court, who is Original Defendant No. 1, took out Chamber Summons No. 2093 of 2007 in Suit No. 527 of 2005 praying that the name of the present Appellant/Original Defendant No. 1 i.e. The Great Eastern Shipping Company Limited, be deleted from the array of parties to the suit and in its place the

name of the Applicant i.e. Great Offshore Limited be inserted. This prayer was made on the basis of a fact that the Great Eastern Shipping Company was demerged. This Chamber Summons was dismissed by learned Single Judge by an order dated 12th August, 2008 which reads as under:

1. Heard the learned Counsel appearing on behalf of the applicant and the plaintiff who is appearing in person.

2. This Chamber Summons is taken out by the applicant - the Great Offshore Ltd. and it is prayed by the counsel appearing on behalf of the applicant that the defendant No. 1 may be deleted and in its place the name "The Great Offshore Limited" be inserted. It is stated that the Defendant No. 1 - The Great Eastern Shipping Company was demerged and, as a result, the Great Offshore Limited is a Company which is really concerned with the case of the plaintiff in this Court.

3. In my view, it is not necessary to grant this relief which is claimed by the defendant No. 1. The Great Offshore Limited has been added as defendant by virtue of the order passed in Chamber Summons No. 760 of 2008. No orders are passed in this Chamber Summons.

4. Chamber Summons is accordingly disposed of.

2. Aggrieved from the above order, the Appellant has filed the present appeal challenging the legality and correctness of the said order.

3. Firstly, we will have to consider the objection raised on behalf of the Respondents in the appeal as to the maintainability of the present appeal. It is contended that under Clause 15 of the Letters Patent, such an order would not be appealable as the order does not determine any right or liability of the parties finally or even otherwise. Learned Counsel appearing for the Appellant/Original Defendant No. 1 has relied upon the dictum of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , specifically referring to Paragraph 113 thereof, which reads as under:

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the CPC seems to be rather narrow and the limitations engrafted by Sub-section (2) of Section 2 cannot be physically imported into the definition of the word `judgment'' as used in Clause 15 of the Letters Patent because the Letters Patent has advisedly not used the terms `order'' or `decree'' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word `judgment'' should receive a much wider and more liberal interpretation than the word `judgment'' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial

Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word `judgment'' as undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

(i) A final judgment. A judgment which decides all the questions or issues in controversy so far as the Trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the Trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(ii) A preliminary judgment. This kind of a judgment may take two forms - (a) where the Trial Judge by an order dismiss the suit without going into the merits of the suit but only a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the Trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the Trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res judicata, a manifest defect in the suit, absence of notice u/s 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the Trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

(iii) Intermediary or interlocutory judgment. Most of the interlocutory orders which contain the quality of finality are clearly specified in Clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the Trial Judge in a suit under Order 37 of the CPC refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff''s

case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the Trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possess his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the Trial Judge would not amount to a judgment within the meaning of Clause 15 of the Letters Patent but will be purely an interlocutory order. Similarly, suppose the Trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of Order 43 Rule 1 though an order rejecting an application to set aside the decree passed ex parte falls within Order 43 Rule 1 Clause (d) and is appelable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the facts of the decree passed in his favour. In these circumstances, therefore, the order passed by the Trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench.

4. It is contended that the order is a judgment as it formally adjudicates and determines the rights of the parties with regard to all or any of the matters in controversy. The Applicant was neither a necessary nor a proper party. Because of a result of demerger, Defendant No. 3 had been impleaded as a party. Thus, name of Defendant No. 1/Appellant ought to be deleted.

5. The order passed by the learned Single Judge is primarily a procedural order. Originally, the suit had been filed only against the Great Eastern Shipping Company Limited and at a subsequent stage the name of the Great Offshore Limited was added as Defendant No. 3 in the suit vide order dated 12th August, 2008.

6. Thereafter, the present Chamber Summons had been taken out. It is apparent that it is an order which is merely a formal order procedural in nature and is not an order determining rights of the parties. The matter has even not been concluded inasmuch as it may be the question that can finally be determined at the time of final disposal of the suit along with other issues. Even if it is assumed, as argued on behalf of the Appellant, that it is not a necessary party, a question can be raised and decided after the parties led their evidence and thereafter the matter can finally be concluded. It is not a case where the Appellant is a stranger to the proceedings. In fact, it is the original defendant since the suit was instituted and as a result of demerger, the other Company i.e. The Great Offshore Limited has come on record.

This order, in our view, in the facts and circumstances of the case, cannot be termed as a "judgment" much less an `order'' attaching finality to the rights of the parties.

7. A reference can usefully be made to a recent judgment of the Full Bench of this Court in the case of Mohd. Riyazur Rehman Siddiqui Vs. Deputy Director of Health Services, , where, after discussing the law in a great detailed including the application of the dictum of the Supreme Court in Shah Babulal Khimji'' case (supra), it held as under:

RIGHT OF APPEAL UNDER LETTERS PATENT:

43. It has been held that Letters Patent is a word of definite legal meaning. It is derived from the latin words literate patents. The Letters Patent are so called because they are open letters, they are not sealed up, but exposed to view, with the great seal pendant at the bottom and are usually directed or addressed by the King to all his subjects at large. Different Letters Patent have been handed down by the Sovereign in British India to Chartered High Courts which included only judicature of Bengal, Madras, Bombay, North West Provinces, Patna, Lahore and Rangoon. (See Blackstone''s Commentaries on the Laws of England, Vol. II. pp. 28485).

44. Now, we may examine the impact of Clause 15 of the Letters Patent which provides for intra Court appeal. Clause 15 of the Letters Patent does not create a substantive right of appeal from the decision of the Single Judge, but such right is obviously subject to the application of the stipulated condition. Right of appeal can be exercised only in accordance with the limitations specified in the provision granting right of appeal. Clause 15 of the Letters Patent reads as under:

15. Appeal to the High Court from Judges of the Court: And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of, the said High Court or one Judge of any Divisional Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a Judgement of one Judge of the said High Court from a Judge of any Division Court, pursuant to Section 108 of the Government of India Act, 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 made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is fit one for appeal; but that the right of appeal from other judgments of Judge of the High Court or of such Division Court shall be to Us, Our heirs of successors in Our or

Their Privy Council, as hereinafter provided.

45. Clause 15 of the Letters Patent is the provision which grants right of appeal to the aggrieved party against the judgment of the learned Single Judge of the Court to Letters Patent Bench. The exception carved out to this right of appeal is that the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction. In other words, where the clause grants right of appeal, it has inbuilt exception and limitation applicable to said right of appeal. It is also a settled proposition of law that a right to appeal can be regulated and/or restricted by the provisions of Section providing such right. The legal right that is available to a party to prefer an appeal from the judgment of the learned Single Judge thus is not a unrestricted or unfettered right. Besides the requirement that the order of the learned Single Judge as understood in common parlance has to be a judgment within the meaning of the said expression of Clause 15 of the Letters Patent to perfect a right of appeal to litigant. Once it clears the parameter of a judgment and is not hit by any of the exceptions stated in the clause itself, an appeal may lie to a letters patent bench. Various aspects of Letters Patent Appeal and especially what is a judgment within Clause 15 of the Letters Patent has been dealt with by a Division Bench of this Court in a recent judgment delivered on 19th June, 2008 (The Bombay Diocesan Trust Association Pvt. Ltd. v. The Pastorate Committee of the Saint Andrews Church and Ors.). A relevant observations of the said judgment are as under:

10. While relying upon the case of Vinita M. Khanolkar Vs. Pragna M. Pai and Others, , it is argued that provision of appeal in Clause 15 of the Letters Patent, which is a charter under which the High Court of Bombay functions, is not whittled down by the statutory provisions of Section 6(3) of the Specific Relief Act. In that case, the Supreme Court stated that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions could not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. It was also noticed that no such bar is discernible from language of Section 6(3) of the Specific Relief Act holding that appeal under Clause 15 would lie to the Letters Patent Bench. It needs to be noticed that in this case, the Supreme Court was primarily concerned with the provisions of the Specific Relief Act which in comparison to the Contempt of Courts act is a statute of general impact. Furthermore, the provisions of Section 6(3) contemplates that no appeal shall lie from any order or decree passed in any suit instituted under that section nor shall any review of such order or decree be allowed. It was on the language of the section

that the Supreme Court was of the view that jurisdiction of the court u/s 15 of the Letters Patent was not ousted and the appeal was consequently, restored to the file of the High Court.

11. Similarly, in the case of State of West Bengal and others Vs. Kartick Chandra Das and others, , the Supreme Court again emphasised the principle that in absence of specific exclusion, the provisions of Sections 4 - 24 and Section 5 of the Limitation Act were applicable to the appeals filed under Clause 15 including those under the Contempt of Courts Act. In that case, it was not an issue whether an appeal would lie to the Division Bench or not as recorded in para 4 of the judgment that maintainability of the appeal was not disputed. It is also useful to notice that in that case, the appeal had been preferred against issuance of contempt notice by the Division Bench. The Supreme Court held that the Appellate Side procedure of the Calcutta High Court was applicable.

12. Lastly, reliance was also placed on the judgment of the Supreme Court in the case of P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, . In that case, the Court was primarily concerned with bar u/s 104(2) of the CPC and Clause 15 of Letters Patent of Madras High Court. The Apex Court again affirmed the principle of harmonious construction of Section 104 which leads to the conclusion that Section 104(1) saves Letters Patent Appeal and bar of Section 104(2) of the CPC does not apply. The only conclusion that can be arrived at is that unless there is specific exclusion by expression mention in the section then alone, the appeal would not lie. It will be appropriate to notice paragraphs 21 and 22 of this judgment on which the learned Counsel placed heavy reliance.

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.

22. Thus the unanimous view of all courts till 1996 was that Section 104(1) CPC specifically saved letters patent appeals and the bar u/s 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.

13. These judgments referred by appellant are different on facts and the judicial dictum does not have a direct bearing to the matters in issue before us in the present appeal. In fact, in the case of Kartick Chandra Das (supra), it was specifically

conceded that appeals against notice of contempt lies and there was no determination on the question of maintainability of appeal even with reference to the provisions of Limitation Act. Moreover, these were primarily determination of lis between the parties in regard to certain personal reliefs and were not the cases of discharge of power within special jurisdiction as to contempt.

14. As is evident from the discussion of the judgments relied upon by the appellant, right of Letters Patent Appeal can be taken away by an express provision in an appropriate Legislation. It is not necessary that the section should expressly use the word "Letters Patent" but if on plain reading of the provision, it is clear that all further appeals are barred then even a Letters Patent Appeal would be barred. The judgments cited by appellant do not have any direct bearing on issue in hand. In the controversy before us in as much as the provisions of the Specific Relief Act, Section 104 of the CPC and the Limitation Act are not pari materia to the provisions of Section 19 of the Contempt of Courts Act. Section 19 of the Act reads as under:

19. Appeals.(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court; (b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that (a) the execution of the punishment or order appealed against the suspended; (b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intents to prefer an appeal, the High Court may also exercise all or any of the powers conferred by Sub-section (2).

(4) an appeal under Sub-section (1) shall be filed (a) in the case of an appeal to a Bench of the High Court, within thirty days; (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

15. The language of Section 19 where gives a statutory right to a party to maintain an appeal, there it restricts such right by using specific language in regard to punishing a person for contempt. The expression used is "An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt". Thus, the statute itself provides the class of cases in which an appeal shall lie. Once a special legislation restricts the right of appeal by specific language, it obviously excludes what is not specifically included. The intention of the Legislature is certainly not to permit or grant statutory right of appeal unless the order passed was for grant of punishment for contempt. The section is self contained provision and even provides that the appeal shall lie to two Judges bench

of the High Court where the decision is of a Single Judge of that court and to the Supreme Court where the order is by a Bench of the High Court. The complete mechanism of right to appeal and forum to which the appeal would lie has been spelt out by the Legislature and, thus, there is no reason for the court to expand its scope to hold that appeal would lie by adding that even the order of discharge shall be included in the expression `punish for contempt'' .

... ...

18. The appeals are filed against a decree or an order which is determination of a lis in accordance with law. The appeal would lie against such order or decree with the exception that such order or decree was not made in exercise of appellate jurisdiction. A decree as even contemplated under the provisions of CPC would be a finding on matters in issue between the parties and would decide such issues. Thus, the matter referred would be the one which decide the rights of the parties and in fact, is a substantial determination of rights of the parties to the lis before the Court of competent jurisdiction. As against this, a matter of contempt is primarily a matter between the Court and the contemnor and is not determination of any lis pending before the court on which parties are litigating. An order of discharge in a contempt, thus, would not be a judgment and order within the meaning of Clause 15 of Letters Patent and an appeal against such an order is excluded under the language of Section 19 of the Contempt of Courts Act which unambiguously states that only orders of punishment for contempt are appealable.

19. As far as this Court is concerned, as back as in Narendrabhai Sarabhai Hatheesing Vs. Chinubhai Manibhai Seth, , the Division Bench took the view that order of court for breach of undertaking to court is not a judgment. An Order of the court refusing to commit a person for breach of an undertaking given to the court and embodied in the order of the Court cannot be said to be a judgment within the meaning of Clause 15, as it does not affect the merits of any question between the parties and hence is not appealable. The Bench also noticed a judgment of Full Bench of Calcutta High Court in Mohendra Lall Mitter v. Anundo Coomar Mitter (1897) 25 Cal. 236 (F.B.) and declined to accept the view firstly as it was not binding and specifically for the reason that decision of the Calcutta High Court was in absence of any reason for the conclusion arrived at and ultimately rejected the contention that an order refusing the application to commit a person for contempt was appealable. The same principle was approved and distinguished by the Full Bench of this Court in the case of Collector of Bombay v. Issac Penhas AIR 1948 Bom 103, where the court held as under:

17. On the preliminary point as to whether an appeal lies, there has been a long and continuous controversy in the different High Courts as to the true meaning to be given to the expression "judgment" in Clause 15 of the Letters Patent. I should have thought that, apart from authority, an order of committal for contempt was a judgment within that definition. The order undoubtedly constitutes final

adjudication. It affects the merits of the case and it also determines the right and liability of the appellant. Let us therefore consider whether there is anything in the reported decisions which are contrary to the view I am suggesting. The definition given by Sir Richard Couch, Chief Justice, in the two Calcutta decisions is considered to be a locus classicus as far as the definition of the expression "judgment" is concerned in Clause 15, Letters Patent. The first of these decisions is reported in 8 Beng. L.R. 433 That was a case where an order was made directing the issue of a writ of mandamus to the Justices of the Peace for Calcutta to compel them to refer to arbitration question of compensation, and the question arose whether an appeal lay from that order, and Sir Richard Couch said in his judgment (p. 452):

We think that `judgment'' in Clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability.

18. In the subsequent decision reported in 13 Beng. L.R. 91 the interpretation was slightly extended and the learned Chief Justice said (page 101):

A judgment "is not a mere formal order, or an order merely regulating the procedure in the suit, but one that has the effect of giving a jurisdiction to the Court which it otherwise would not have.

In that case the learned Chief Justice was considering an order refusing to set aside an order granting leave to sue to the plaintiff under Clause 12, Letters Patent.

19. The Madras High Court has always given a more liberal interpretation to the expression "judgment", and the leading case is the one reported in 35 Mad. 1, where we have the judgment of Sir Arnold White, and the opinion of that learned Chief Justice as to the true meaning of the expression "judgment" is (p.7):

If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause.

20. This High Court has always preferred to follow the Calcutta High Court rather than the Madras High Court: or, in other words, it has undoubtedly given a more restricted meaning to the expression "judgment" than the Madras High Court has donesee the observations of Sir Basil Scott C.J. In 11 Bom. L.R. 241

...

23. Then we come to the decision which has created some difficulty, and that is the decision reported in 38 Bom. L.R. 571 The order with which the Divisional Bench of Sir John Beaumount C.J., and Rangnekar J. was concerned was refusing to commit a person for breach of an undertaking given to a Court, and the Court held that no appeal lay from such an order. It is difficult to see how such an order could possibly

be a `judgment'' within the meaning of Clause 15, Letters Patent and give the right of appeal to a person who had moved the Court for contempt and had failed to get an order for committal. It is impossible to say that any right or liability of the appellant was determined by the order of committal. The appellant had no right to get such an order from the Court. It was the discretion of the Court, and the Court having refused to exercise its discretion, the appellant could not say that any right of his was affected or any liability imposed upon him. Therefore on the facts of the case that decision is clearly distinguishable from the facts before us where the appellant has been ordered to pay a fine and has been held to be guilty of contempt. It cannot be disputed that in this case the appellant''s rights are undoubtedly affected and that a liability has been imposed on him on a final adjudication by the learned Judge. But it is contended by Mr. Taraporewalla that the decision in 38 Bom. L.R. 571 is of wider import than the facts on which it was decided. It is suggested that that decision lays down that there is no appeal from any order made by a Judge in contempt proceedings whether he refuses to commit or whether he makes a committal order. I refuse to read that judgment of the Court of Appeal in that light. What is contended is that that judgment relies on the definition given by Sir Richard Couch C.J. and it is argued that the decision of Bhagwati J. is not a decision between parties and, therefore, it cannot constitute a judgment. Now it is to be remembered that most of the decisions reported in the books dealing with the definition of `judgment'' were cases between parties and usually the question that fell to be determined was whether a certain order was final or interlocutory; and if interlocutory, whether it was `judgment'' within the meaning of Clause 15, Letters Patent. What we are concerned with here is not the case of a `judgment'' given between parties in a litigation between parties but a `judgment'' given against a party which affects his rights. It would be clearly wrong to apply a definition given in its own context applicable to its own facts and circumstances to an entirely different set of facts and circumstances. The expression "between the parties" in the definition of Sir Richard Couch J. is not an integral part of that definition. Therefore, in my opinion, in deciding that an appeal lies from an order of committal, we are in no way deviating from the accepted definition of Sir Richard Couch to the extent that that definition deals with the essentials and fundamentals of the expression `judgment'' occurring in Clause 15, Letters Patent. As I have already pointed out, the order of Bhagwati J. affects the merits of the question by determining a right or liability. It is not between parties, but that it could not be because the contempt proceedings were between the Court and the appellant and not between the appellant and the respondent. Sir Richard Couch did not intend and could not have intended that any decision affecting the rights of a party against which the Court has made an order could not be a `judgment'' merely because there was no other party to those particular proceedings.

... ...

23. The expression "judgment" was examined by the Supreme Court in the case of Hanskumar Kishanchand Vs. The Union of India (UOI), . The Supreme Court while dealing with the powers of Federal Court specifically held that the word `judgment'' used in Section 2(b) would be a judgment, decree or order of a High Court in civil case and an order under Defence of India Act would not be a judgment, decree or order and, thus, leave to appeal could not be granted.

24. In the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , the Supreme Court spelt out the guidelines and illustrations in regard to the Letters Patent Clause 15 of the Bombay High Court and appeals which could be maintained before the Division Bench against the judgment. The court also explained the phrase `judgment''. While including some of the interlocutory orders within the ambit of the judgment, the Court stated that it should receive a much wider and liberal interpretation than the word `judgment'' used in Civil Procedure Code. The court clearly stated the dictum that it cannot be said that every order passed by the trial Judge would amount to judgment. It seems that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. The court held that an order even though it keeps the suit alive but still decides an important aspect of the trial and which affects the vital right of the defendants would be liable to be construed as judgment.

25. The Supreme Court in its earlier judgments and reference can be made to the case of Ct. A. Ct. Nachiappa Chettiar and Others Vs. Ct. A. Ct. Subramaniam Chettiar, , wherein the Apex court held that the word "judgment" cannot refer to the various interlocutory orders and judgments that may be passed during the hearing of the suit and so the word "judgment" cannot be given the meaning assigned to it by Section 2(9) of the Civil Procedure Code. It cannot mean in the context the statement given by the Judge of the grounds of a decree or order. It must mean a judgment which finally decides all matters in controversy in the suit. Similar view has been expressed by the Supreme Court in Shri Radhey Shyam Vs. Shyam Behari Singh, ...

28. Judgment by the court is an affirmation of a relation between the particular predicate and a particular subject. It is always a declaration that a liability, recognised as within the jural sphere, does or does not exist. A judgment, as the culmination of the action, declares the existence of the right, recognises the commission of the injury, or negatives the allegation of one or the other. [Gurdit Singh and Others Vs. State of Punjab and Others,]

29. The principles which emerge from the consistent view taken by the Courts including the Supreme Court is, there has to be a conscious determination of rights and liabilities between the parties to a lis before the court of competent jurisdiction. Undisputedly, contempt is a matter primarily between the Court and the contemnor. The proceedings of Contempt of Court would be initiated against the contemnor through any of the specified modes with or without consent of the specified

authorities depending on the facts and circumstances of each case. The contempt jurisdiction vested in the Court by development of law as well as under the statutory provision is very wide and is of pervasive magnitude. A party to the proceedings before the court may bring to the notice of the Court any matter which invites the attention of the Court for taking any action under the provisions of the Contempt of Courts Act. Once such act is done, the matter squarely falls in the exclusive domain of the Court of competent jurisdiction, as the purpose of contempt jurisdiction is primarily to ensure enforcement of the order of the court and to maintain the dignity of the judicial administrative system. The contempt proceedings per se are not taken or declined for the benefit or interest of the individual party. When the court passes an order of discharge or holds that no case for contempt of Court is made out and declines to take action, no right or interest of the parties to the lis are determined by the court much less finally. Such an order besides being not appealable on the bare reading of the provisions of Section 19 of the Contempt of Courts Act, would also not be a judgment within the meaning of Clause 15 of the Letters Patent and as such, not appealable. The provisions of Section 19 of the Act are not ambiguous and do not leave any scope for addition or substitution of a word. Definite legislative intent is clear that right to appeal shall only be available in the cases where there is an order of punishment. The matter primarily and substantially being between the court and the contemnor, parties to the lis cannot be permitted to raise issues or litigate on the view of the court that a case of contempt is made out or not. Where the court in exercise of its judicial discretion and keeping in mind the well settled principles of contempt jurisdiction finds that contempt proceedings need not be initiated, or no contempt is made out or discharges the contemnor on merits of the case, the appeal before the Division Bench even with the aid of Clause 15 of the Letters Patent would not be maintainable. In the present case, the learned Single Judge has concluded, as already noticed, that the petitioners themselves are not sure as to which of the contemnors are allowed to use the Welfare Centre and while taking an overall view of the matter held that this was not a fit case where action under the Contempt of Courts Act can be taken. This order of the learned Single Judge, in our opinion, is not appealable in view of the unambiguous language of section 19 of the Contempt of Courts Act and an appeal is not maintainable even under Clause 15 of the Letters Patent. Although we have no hesitation in rejecting this appeal as being not maintainable, in the facts and circumstances of this case, Parties are left to bear their own cost.

46. Another facet of right of appeal under this clause is that the provisions of Clause 15 are subject to legislative powers of the Governor-General in Legislative Council and also of the Governor-General in Council u/s 71 of the Government of India Act, 1915. Clause 44 of the Letters Patent specifically contemplates that the provisions of Letters Patent are subject to the exercise of legislative powers by the competent legislature. In other words, Clause 15 of the Letters Patent does not confer an

absolute or unqualified right to appeal. This remedy is subject to the other laws enacted by competent Legislature. Viewed from that angle, the restrictions contemplated u/s 100A of the CPC would be a relevant consideration which would control right of appeal as envisaged under Clause 15 of the Letters Patent.

47. Clause 12 of Letters Patent is an independent clause which relates to the exercise of ordinary original jurisdiction in suits by this Courts. The orders which are passed by the High Court in exercise of its original jurisdiction would be apparently covered under Clause 12 of the Letters Patent but of course to the limitation stated in the provision itself. But, in the present case, jurisdiction under Clause 12 is not a relevant consideration to answer the questions of law posed before us.

48. In Shah Babulal Khimji''s case (supra), the Supreme Court, while explaining the ingredients of a judgment, held that Section 104 with Order XLIII Rule 1 of the CPC is neither inconsistent, nor override, nor controls Clause 15 of the Letters Patent. The judgment was in relation to the orders passed by the learned Single Judge of this Court in exercise of its original jurisdiction.

49. Similar view was also expressed by the Supreme Court in Vinita M. Khanolkar'' case (supra) where the Court held that the order passed by the learned Single Judge in the proceedings u/s 6 of the Specific Reliefs Act would be appealable under Clause 15 of the Letters patent. The Courts stated the principle that the powers of the appellate court and right provided under the provision to appeal can be excluded by a statute expressly and it cannot be excluded by juridical provision barring the appeal.

50. We will shortly proceed to discuss the effect of provision of Section 100A of the CPC where the Legislature has specifically used non obstante language with particular reference to letters patent.

8. The provisions of order XLIII Rule 1 of the Code of Civil Procedure, 1973 do not permit an appeal against an order made under Order I Rule 10 of the CPC for addition and/or deletion of parties. It is only with the aid of the provisions of Clause 15 of the Letters Patent of the Bombay High Court, a party can prefer an appeal in addition to or otherwise to the provision of Order XLIII Rule 1 as the Supreme Court has already held that there is no inconsistency between these two sets of provisions controlling the field.

9. The expression "judgment" may include an interlocutory order but every interlocutory order would not amount to a judgment. An interlocutory order which does not have the effect of substantially determining the rights of the parties or material controversies in the suit finally may not be construed as a judgment for the purpose of Clause 15 of the Letters Patent. Every interlocutory order, which is formal or procedural in its nature and substance, would not be appealable in a Letters Patent Appeal.

10. Another aspect which can be considered by the Court is that if interlocutory order has determined some controversy which has seriously prejudiced the interest of the parties in the trial of a suit, affected party could also file an appeal as such order is within the ambit and scope of the expression "judgment" for that purpose. In the present case, all that the learned Single Judge has done is that he declined the permission to delete the name of the Appellant i.e. The Great Eastern Shipping Company Limited primarily for the reason that it was the original Defendant in the suit and different controversies have been raised in the pleadings of the parties. The non-applicant - the Plaintiff in the suit has opposed the said application and rightly so. The suit instituted by the Plaintiff Respondent No. 1 is with a prayer that the letter dated 20th September, 2004 purporting to terminate the services of the Plaintiff is arbitrary without jurisdiction, illegal and void, and had claimed the consequential benefits of pay and allowances along with other reliefs. The Respondent No. 1/Plaintiff was in the employment of the Appellant and the effect of demerger would have to be seen during the course of the trial. Thus, this controversy could not and has rightly not been decided by the learned Single Judge at this stage of the proceedings. What relief the Respondent would be entitled to and from whom, is a question which has to be gone into on merits during trial. The objection of the Appellant that it is not a necessary or a proper party to the suit may be accepted by the Court ultimately but the claim of the Appellant - Original Defendant No. 1 is so intermingled that the application for deletion of its name at this stage cannot be decided on merits and has rightly been rejected by the learned Single Judge.

11. In view of the above settled position of law and facts and circumstances of the present case, we are of the considered opinion that firstly the impugned order is not appealable within the meaning of Clause 15 of the Letters Patent of Bombay High Court and secondly the order passed by the learned Single Judge does not suffer from any error of law or jurisdiction. The Appeal dismissed, leaving the parties to bear their own costs.