
*Before Binod Kumar Roy, C.J., G. S. Singhvi, V. K. Bali, S. S. Nijjar,
Amar Dutt, Pritam Pal, and Nirmal Yadav, JJ.*

BALBIR KAUR,—*Appellant*

versus

BHIM SINGH,—*Respondents*

L.P.A. No. 225 of 2003

1st December, 2004

*Code of Civil Procedure, 1908—Section 100-A (as amended)-
Hindu Marriage Act, 1955—Section 13—Appeal of husband for grant
of decree of divorce allowed by a Single Bench of High Court—
Challenge thereto—Whether an appeal against an order passed by a
Single Judge is maintainable—Held, no—Amended provisions of
Section 100-A CPC provide 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 lies from the judgment and decree
of such Single Judge—Provisions of 1955 Act also do not contemplate
filing an appeal against the judgment of the Single Judge—Appeal
liable to be dismissed as not maintainable.*

Held, that the Hindu Marriage Act, 1955 does not contemplate any provision for filing any Letters Patent Appeal against the judgment of the learned Single Judge. The Memorandum of Letters Patent Appeal shows that it has been filed under Clause X of the Letters patent. The counsel could not distinguish the express verdict given by the Constitution Bench of the Supreme Court and support his arguments as to how this appeal is maintainable, which has been admittedly filed after coming into force of the new Section 100-A of the Code of Civil Procedure. We accordingly, dismiss this appeal as not maintainable.

(Para 8 & 9)

H. S. Dhandi, Advocate, counsel for the appellant.

Ashwani Chopra, Senior Advocate assisted by Ashish Chopra,
Arun Bansal and Rajneesh Chauhan, Advocates, counsel
for the respondent.

Harbhagwan Singh, Advocate General, Punjab; Ashok
Aggarwal, Advocate General, Haryana; M. L. Sarin, Senior
Advocate assisted by Hemant Sarin; and Anupam Gupta,
Advocates—Amicus Curiae.

ORDER**BINOD KUMAR ROY, C.J. (F.B.)**

Chief Justice :—This is wife's Letters Patent Appeal under Clause X of the Letters Patent Appeal.

(2) The respondent filed a petition on 7th September, 1992 seeking a decree of divorce of the Appellant before the District Judge, Patiala under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), which was registered as H.M. Act Petition No. 185. The Appellant contested this claim. The learned District Judge, Patiala dismissed the Respondent's petition,—*vide* his order dated 1st April, 1994. The respondent moved this Court in First Appeal From Order No. 78-M of 1994. The Appellant contested the Appeal. A learned Single Judge, however, allowed the appeal and granted decree of divorce,—*vide* his judgment dated May, 1st, 2003. This decree is under challenge in this Letters Patent Appeal.

(3) The office,—*vide* its note dated 5th July, 2003 raised the question of maintainability of this appeal in view of the amendment of the Code of Civil Procedure. To this the Appellant filed a petition dated 7th July, 2003 stating that "Since in this case judgment of Lower Court has been set aside, so this case is competent to be heard by the Hon'ble Division Bench."

(4) The respondent also appeared.

(5) The learned counsel for the Appellant contested the objection of the office by placing reliance on a three Judge Division Bench Judgment of the Supreme Court in **Subal Paul versus Malina Paul and another, (1)**, whereas the learned counsel for the Respondent supported the objection of the office.

(6) A Constitution Bench of five Judges of the Supreme Court in **P. S. Sathappan (Dead) by L. Rs. versus Andhra Bank Limited and others (2)**, in the meantime has considered the judgment in Subal Paul's case and Section 100-A of the Code of Civil Procedure and observed and held as follows :—

"144. In the case of **Subal Paul versus Maline Paul** (*supra*), the question was whether a Letters Patent Appeal

(1) 2003 (2) Recent Civil Reports (Civil) 234

(2) J.T. 2004 (8) S.C. 464

was maintainable against an order passed by a single judge of the High Court in an appeal under Section 299 of the Succession Act, 1925. It was held that an appeal under Section 299 was permitted by virtue of Section 299 and not under Section 104 C.P.C. Section 299 of the Indian Succession Act, 1925 reads as follows :—

“299. Appeal from orders of district judge. Every order made by a district judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals.”

“Thus Section 299 permitted an appeal to the High Court in accordance with the provision of C.P.C. That provision was Section 104. The further appeal was under Letters Patent only. Section 299 of the Indian Succession Act did not permit it. The Letters Patent Appeal was saved/ permitted by the words “any other law for the time being in force” in Section 104(1). It was thus held that Clause 15 of the Letters Patent permitted a right of appeal against order/judgment passed under any Act unless the same was expressly excluded. It was held that the bar under Section 104 (2) would not apply if an appeal was provided in any other law for the time being in force. Thus this authority also recognizes that an appeal permitted by “any other law for the time being in force” will not be hit by Section 104(2).

“145. Thus, the consensus of judicial opinion has been that Section 104(1) Civil Procedure Code expressly saves a Letters Patent Appeal. At this stage it would be appropriate to analyse Section 104 C.P.C. Sub-section (1) of the Section 104 C.P.C. 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.

146. As such an appeal is expressly saved by Section 104(1). Sub-Clause 2 cannot apply to such an appeal. Section 104 has to be read as a whole. Merely reading sub-clause (2) by ignoring the saving Clause in sub-section (1) would lead to a conflict between the two sub-clauses. Read as a whole and on well established principles of interpretation it is clear that sub-clause (2) can only apply to appeals not saved by sub-clause (1) of Section 104. The finality provided by sub-clause (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 C.P.C. 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 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-clause (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 100A, introduced in 1976, reads as follows :—

“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.”

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 100A 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 in the C.P.C. Thus now a specific exclusion was provided. After 2002, Section 100A reads as follows :—

“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, 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 100A no Letters Patent Appeal would be maintainable.”

(7) We are, thus, unanimous to hold that the doubt cropped in view of Subal Paul’s case stands set at rest.

(8) In fairness to Mr. H.S. Dhandi, learned counsel of the Appellant, we note his submission before us that this Letters Patent Appeal is maintainable under the provisions of ‘the Act’. He, however, failed to show us any provision of ‘the Act’ to support his contention. ‘The Act’ does not contemplate any provision for filing any Letters Patent Appeal against the judgment of the learned Single Judge. The Memorandum of this Letters Patent Appeal shows that it has been filed under Clause X of the Letters Patent. Mr. Dhandi could not distinguish the express, verdict given by the Constitution Bench of the Supreme Court and support his argument as to how this appeal is maintainable, which has been admittedly filed after coming into force of the new Section 100-A of the Code of Civil Procedure.

(9) We, accordingly, dismiss this appeal as not maintainable but without making any order as to costs.

(10) We thank all *amicus curiae* for assisting us.