

# The Indian Law Reports

LETTERS PATENT APPEAL

*Before Mehar Singh, C. J. and B. R. Tuli, J.*

SMT. DASSI,—*Appellant*

*versus*

DHANI RAM,—*Respondent*

**Letters Patent Appeal No. 237 of 1963.**

July 22, 1968.

*Letters Patent—Clause X—Hindu Marriage Act (XXV of 1955)—Ss. 3(b), 19, 21 and 28—Code of Civil Procedure—(Act V of 1908)—S. 96—Punjab Courts Act (VI of 1918)—S. 39—Letters Patent Appeal from order of Single Judge setting aside decree for divorce in exercise of appellate jurisdiction of High Court—Whether maintainable.*

*Held*, that the provisions of sections 3(b), 19, 21 and 28 of the Hindu Marriage Act make it quite clear that the court in which proceedings are held on petitions under the said Act is the established court and the appeals from its decrees and orders shall lie to the court to which appeals from decrees and orders passed by it in civil suits lie. The appeal to the High Court from a decree or order passed by a subordinate court lies either under section 96 of the Code of Civil Procedure or section 39 of the Punjab Courts Act. Such appeals are heard by the High Court as an Appellate Court and a further appeal from the judgment, decree or order of a Single Judge made in the exercise of appellate jurisdiction lies, under clause 10 of the Letters Patent, to a Division Bench. That appeal has not been taken away by the Hindu Marriage Act. The appeal under clause 10 of the Letters Patent from the order of a learned Single Judge passed in appeal against an order made under the said Act is, therefore, maintainable.

(Paras 5 and 7)

*Letters Patent appeal under Clause 10 of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice D. K. Mahajan, dated the 8th day of March, 1963.*

K. C. NAYAR, ADVOCATE, for the Petitioner.

M. C. SOOD, ADVOCATE, for the Respondent.

## JUDGMENT

TULI, J.—Shrimati Dassi, wife of Dhani Ram, respondent, filed a petition under section 13 of the Hindu Marriage Act, 1955, for divorce on the ground that her husband was living in adultery with one Shrimati Reoti. The learned trial Court granted to the petitioner a decree for divorce against her husband with costs on 24th January, 1962. Against that decree, Dhani Ram filed an appeal which was accepted by D. K. Mahajan, J., on 8th March, 1963 and the petition of Shrimati Dassi was dismissed leaving the parties to bear their own costs throughout.

(2) Shrimati Dassi, feeling aggrieved from the judgment of D. K. Mahajan, J., has filed this Letters Patent Appeal.

(3) Shri M. C. Sood, learned counsel for the respondent, has raised a preliminary objection that the Letters Patent Appeal is not maintainable as it is not provided in the Hindu Marriage Act, 1955 (hereinafter called the Act). There is no merit in this objection. Section 19 of the Act provides :—

“Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.”

“District Court” has been defined in section 3(b) of the Act as under :—

“ ‘District Court’ means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.”

Section 21 of the Act provides :—

“Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).”

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Section 28 of the Act provides that all decrees and orders made by the court in any proceeding under this Act may be appealed from under any law for the time being in force provided that there shall be no appeal on the subject of costs only.

(4) From the provisions of the Act cited above, it is at once clear that the court in which proceedings are held on petitions under the Act is the established court and the appeals from its decrees and orders lie to the court to which appeals from decrees and orders passed in civil suits will lie. It was held by the House of Lords in *National Telephone Company v. His Majesty's Postmaster-General* (1) :—

“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.”

(5) The appeal to this Court from the decree and orders passed in petitions under the Act lies either under section 96 of the Code of Civil Procedure or section 39 of the Punjab Courts Act read with section 28 of the Act. The High Court hears the appeal from the decrees and orders as Appellate Court and a further appeal from the judgment, decree or order of a Single Judge made in the exercise of appellate jurisdiction lies under clause 10 of the Letters Patent to a Division Bench and this appeal has not been taken away by the statute. It was held by their Lordships of the Supreme Court in *South Asia Industries (P) Ltd. v. S. B. Sarup Singh and others* (2), that if a statute gave a right of appeal from an order of a Tribunal or a Court without any limitation thereon, the appeal to the High Court would be regulated by the practice and procedure obtaining in the High Court, including the right of Letters Patent Appeal. The learned counsel has also cited before us the Supreme Court judgment reported as *The Union of India v. The Mohindra Supply Co.* (3), wherein it was held :—

“Section 39(2) of the Arbitration Act, expressly prohibits a ‘second appeal’ from an order passed in appeal under

(1) 1913 A.C. 546.

(2) A.I.R. 1965 S.C. 1442.

(3) A.I.R. 1962 S.C. 256.

section 39(1) except an appeal to the Supreme Court. There is clear indication inherent in sub-section (2) that the expression 'second appeal' does not mean an appeal under section 100 of the Code of Civil Procedure. The expression 'second appeal' means a further appeal from an order passed in appeal under section 39(1) and not an appeal under section 100, Civil Procedure Code."

(6) It was further held that appeal under clause 10 of the Letters Patent from the order of a Single Judge would be a 'second appeal' and as the 'second appeal' had been barred by section 39(2), appeal under clause 10 of the Letters Patent would not be competent.

(7) It is thus clear that their Lordships of the Supreme Court held that the Letters Patent Appeal was not competent because of the provision made in section 39(2) of the Arbitration Act by the Legislature which is competent to abridge the rights of appeal under the Letters Patent by virtue of clause 37 of the Letters Patent. The appeal under clause 10 of the Letters Patent from the order of the learned Single Judge passed in appeal against an order made under the Act is, therefore, maintainable.

(8) Shrimati Dassi produced six witnesses besides herself in support of her allegation that her husband, Dhani Ram, was living in adultery with Shrimati Reoti, and Dhani Ram produced six witnesses including himself, his father and Shrimati Reoti to controvert the allegation of Shrimati Dassi, appellant. The learned Single Judge has very carefully and minutely considered the entire evidence produced by both the parties and has come to the conclusion that the appellant has not been able to prove her allegations of adultery against the respondent. The entire evidence has been read before us by the learned counsel for the appellant and we do not find any ground to differ from the conclusion of the learned Single Judge to the effect that the evidence in the case is neither convincing nor enough to arrive at a firm finding that the allegation of adultery against the husband has been proved. The charge of adultery is a serious charge and has to be proved beyond reasonable doubt. The plea of the husband was that Shrimati Reoti was her maternal aunt and he did not have any illicit relations with her. Shrimati Reoti has not been made a party to the petition for divorce. She has herself appeared in the witness-box and has stated that she has had no illicit relations with Dhani Ram.

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Ordinarily, in a Letters Patent Appeal, the Bench is entitled to consider the evidence afresh but unless very strong grounds are made out, the Letters Patent Bench will accept the finding of the fact arrived at by the learned Single Judge after due consideration of the evidence on the record. The evidence on the record in the instant case is not sufficient to come to the conclusion that the charge of adultery has been proved.

(9) For the reasons given above, this appeal fails and is dismissed with no order as to costs.

MEHAR SINGH, C.J.— I agree.

K. S.

REVISIONAL CIVIL

*Before Prem Chand Pandit, J.*

PURAN SINGH,—*Petitioner*

*versus*

GEHAL SINGH AND OTHERS,—*Respondents*

**Civil Revision No. 527 of 1968.**

July 31, 1968

*Code of Civil Procedure (Act V of 1908)—S. 151, Order 41 and Rule 20—Certified copies of judgment and decree under appeal not mentioning the name of a contesting party—Parties names in Memorandum of appeal mechanically copied from such judgment and decree—Mistake of the appellants—Whether bona fide—Such contesting party—Whether can be impleaded in appeal after the expiry of period of limitation.*

*Held*, that where a memorandum of appeal does not mention the name of a contesting party and the mistake creeps in on account of the erroneous certified copies having been supplied by the court officials to the appellants, he should not be made to suffer on account of the mistake having been committed by some officer of the court in the discharge of his duties. It is quite apparent that the appellants or his counsel did not notice that error at the time when the appeal