

**A.F.R.**

**Reserved on 16/11/2009**

**Delivered on 18/12/2009.**

Special Appeal No.1748 of 2009.

U.P. Cement Vetanbhogi Sahkari Rin Samiti Ltd.....Appellant

Versus

Official Liquidator & Anr. ....Respondents

.....

**Hon'ble Ashok Bhushan, J.**

**Hon'ble K.N. Pandey, J.**

**(Delivered by Hon'ble Ashok Bhushan, J.)**

Heard Shri W.H. Khan, learned Senior Advocate assisted by Shri J.H. Khan for the appellant and Shri Ashok Mehta for the respondents.

This Special Appeal under Chapter VIII Rule 5 of the High Court Rules has been filed against the judgment and order of the learned Single Judge of this Court dated 26/5/2009 deciding the Application for Correction in an earlier order dated 27/4/2007 passed by learned Single Judge in Civil Misc. Company Appeal/Objection No.85/2007 in Company Application No. 4/97. The application has been rejected by a learned Single Judge vide its order dated 26/5/2009. The order dated 27/4/2007 was passed by learned Single Judge under Rule 164 of the Companies (Court) Rules, 1959 (hereinafter called the "Rules 1959"). In the matter of the report of the Official Liquidator, Uttar Pradesh adjudicating on the 'proof of debts' and proposing to distribute the sale proceeds of the assets of the 'U.P. State Cement Corporation Limited (in liquidation) wound up by the Court on 08/12/1999.

Shri Ashok Mehta learned counsel appearing for the respondents raised a preliminary objection regarding the maintainability of this Special Appeal under Chapter VIII Rule 5 of the High Court Rules. He submits that the order which has been impugned is an order passed in appellate proceedings before the learned Single Judge under Rule 164 of Rules, 1959 hence both the Letters Patent Appeal as well as appeal under Section 483 of the Companies Act, 1956 ("hereinafter called the Act 1956") is barred. Shri Ashok Mehta learned counsel appearing for the respondents contends that the Special Appeal against the order of learned Single Judge passed in appellate jurisdiction is not maintainable. He contends that under Chapter VIII Rule 5 of the High

Court Rules the Special Appeal is barred against an order passed by learned Single Judge in exercise of appellate jurisdiction. He submits that appeal under Section 483 of the Companies Act also cannot be entertained against an order passed by learned Single Judge passed in appellate exercise of jurisdiction. He submits that Section 100-A C.P.C. also clearly bars any further appeal after order of learned Single judge in exercise of appellate jurisdiction.

Shri W.H. Khan, learned Senior Counsel appearing for the appellant refuting the submission of learned counsel for the respondents contends that this appeal is clearly maintainable under Section 483 of the Companies Act, 1956. He submits that under Section 483 of the Companies Act, any order passed by learned Company Judge is appealable. He has placed reliance on the judgement of the Apex Court in Shankerlal Aggarwala & Ors. Vs. Shankerlal Poddar & Ors, AIR 1965 SC, 507; Smt. Arati Dutta Vs. M/s. Eastern Tea Estate (P) Ltd., AIR 1988 SC, 325 and Maharashtra Power Development Corporation Ltd. Vs. Dabhol Power Co. & Ors., AIR 2004 Bombay, 38.

We have considered the submissions of the learned counsel for the parties and have perused the record.

We proceed to decide the preliminary objection raised by the learned counsel for the respondents.

Learned counsel for the appellant has placed reliance under Section 483 of the Companies Act, 1956 for maintainability of the appeal. Section 483 provides as follows:

**“483. Appeals from orders.-**Appeals from [any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002], in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order of decision of the Court in cases within its ordinary jurisdiction.”

Learned counsel for the appellant submits that the words used in Section 483 to the effect “in the same manner... and subject to the same conditions” cannot be interpreted to exclude the appeal under Section 483 and the above words only regulate procedure of filing the appeal. Reliance has been placed on the judgement of the Apex Court in Shankerlal Aggarwalas case (supra). The Apex Court in the aforesaid judgment had occasion to interpret Section 202 of the Companies Act, 1913 which was a provision parimateria to the provision to Section 483.

Following was laid down in para 18 of the judgment:

“18. The question that would arise is as to what is meant by "ordinary jurisdiction" of the Court. Plainly the words would only exclude jurisdiction vested in the Court by special statutes as distinguished from the statutes constituting the Court. Undoubtedly, in the case of a High Court the limits of whose jurisdiction are governed by its Letters Patent, the Letters Patent would determine what the "ordinary jurisdiction" is. But that Letters Patent is not immutable and has been the subject of several alterations. Thus when the Companies Act was passed in 1913, an appeal lay from every "judgment" of a Single Judge of the High Court. But in March, 1919 it was amended so as to exclude the rights of appeal from judgment passed in exercise of revisional jurisdiction and in exercise of the power of superintendence under S. 107 of the Government of India Act, 1915. There can be no doubt either that the exercise of revisional or supervisory jurisdiction is as much "ordinary jurisdiction" of the High Court as its original or appellate jurisdiction and it cannot be that there has been any alteration in the law as regards the appealability of decisions of a High Court under S.202 of the Companies Act by reason of the amendment of the Letters Patent. Again, the Letters Patent were amended in January, 1928 when appeals against decisions in second appeals were made subject to the grant of leave by Judges rendering such decisions. If the decision in a second appeal were in the exercise of "ordinary jurisdiction", and there can be no controversy about it, then the construction of S. 202 of the Companies Act in relation to a High Court which is the primary Court exercising jurisdiction under the Companies Act (vide S. 3(1) of the Act) would lead to anomalous results as judgments or decisions rendered in different types of cases, though all of them are in the exercise of "ordinary jurisdiction", are subject to different conditions as regards appealability. We thus agree with Chagla, C.J. that the second part of the section which refers to "the manner" and "the conditions subject to which appeals may be had" merely regulates the procedure to be followed in the presentation of the appeal and of hearing them, the period of limitation within which the appeal is to be presented and the forum to which appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the opening words of that section. We also agree with the learned Judges of the Bombay High Court that the words "order or decision" occurring in the 1st part of S. 202 though wide, would exclude merely procedural orders or those which do not affect the rights or liabilities of parties. Learned Counsel for the appellant did not suggest that if this test were applied the order of the learned Company Judge would be an order or decision merely of a procedural character from which no appeal lay.”

Another judgment relied on by the learned counsel for the appellant is Smt. Arati Dutta (supra) which was a case where the Apex Court following its earlier judgment in Shakeral Aggarwala's case held that the appeal would lie in the same manner to the same Court.

In Smt. Arati Dutta's case an order was passed on a petition under Sections 397 and 398 of the Companies Act against which order an appeal was filed in the High Court which appeal was decided by the

Division Bench. Special Leave Petition was filed in the Supreme Court in which the question was considered as to whether the appeal before the Division Bench under Section 483 was maintainable or not.

Following was laid down in paragraphs 6, 7 and 8 of the judgment which is quoted below:

"6. The Court further held that there was nothing in S. 483 of the Companies Act 1956, which took away or curtailed the right of appeal provided by S. 5(l) of the Delhi High Court Act, 1966, and Cl. 10 of the Letters Patent (Punjab) as applicable to the Delhi High Court; and that the jurisdiction conferred on the Company Judge of the High Court under S. 10 of the Companies Act was none other than its ordinary civil jurisdiction and appeal lay also under Cl. 10 of the Letters Patent to a Division Bench from the order of the Company Judge.

7. In this case in the High Court of Gauhati, however, unlike the Bombay High Court or the Calcutta High Court or the Delhi High Court, no Letters Patent was applicable to the Gauhati High Court. It was therefore held that there was no provision for an appeal to the judgment of the learned single Judge of the High Court. In our opinion the decision in Shankar Lal Aggarwal v. Shankar Lal Poddar, (AIR 1965 SC 507) (supra) of this Court indicated the true position where this Court held in S. 202 of the Companies Act, 1913 was in pari materia with the present section. This Court preferred the view of the Chief Justice Chagla of the Bombay High Court reported in Bachharaj Factories Ltd. v. Hirjee Mills Ltd., AIR 1955 Bom 355 to the view expressed by the Calcutta High Court in Madan Gopal Daga v. Sachindra Nath Sen, AIR 1928 Cal 295 wherein it was held that an order or the decision made or given in the matter of winding up of a company to be appealable had to satisfy the requirements of Cl. 15 of the Letters Patent. This interpretation was not accepted by other High Courts and the Bombay High Court held differently. The view of the Bombay High Court was preferred by this Court in the aforesaid decision and it was observed as follows :

"We thus agree with Chagla C.J., that the second part of the section which refers to 'the manner' and 'the conditions subject to which appeals may be had' merely regulates the procedure to be followed in the presentation of the appeals and of hearing them, the period of limitation within which the appeal is to be presented and the forum to which appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the opening words of that section."

8. In our opinion this position is clear from the observation of this Court in Shankar Lal Aggarwal v. Shankar Lal Poddar (supra) that the appeal lies to the same High Court irrespective of the powers under the Letters Patent. Sections 397 and 398 read with S. 483 indicate that the appeal would lie in the same manner to the same court and naturally and logically an appeal from the decision of the single Judge would lie to the Division Bench. This in our opinion follows logically from the ratio of decision of this Court in Shankarlal Aggarwal v. Shankarlal Poddar (supra) as well as other decisions referred hereinbefore. It is true that there is perhaps no procedure to file an appeal from the decision of the learned single Judge of the Gauhati High Court. If that is so rules

should be framed by the High Court in its jurisdiction of Rule making power for filing and disposal of such appeals. But absence of the procedure rules do not take away a litigant's right to file such appeals when the statute confers such a right specifically and the jurisdiction of the High Court to dispose of such an appeal if so filed.”

Arati Dutta’s case was not a case where the learned Company Judge has exercised any appellate jurisdiction.

The Division Bench judgment of the Bombay High Court in Maharashtra Development Power Corporation (supra) was a case where the Company Law Board had passed an order against which an appeal was filed before the learned Single Judge under ‘Section 10 F of the Companies Act. Learned Single Judge decided the appeal against which an appeal was filed before the Division Bench under Section 483 of the Companies Act. Before the Division Bench of the Bombay High Court, reliance was placed under Section 100A C.P.C. which was amended w.e.f. July, 2002 excluding certain appeals. The Division Bench of the Bombay High Court relying on Section 4 C.P.C. held that appeal was not barred. Following was laid down in paragraphs 22 and 23 of the judgment which is quoted below:

“22.We are also not inclined to accept that Section 100-A of the Code of Civil Procedure is the specific provision to the contrary within the meaning of Section 4(1) of the said code which limits or otherwise affects the right of appeal provided under Section 483 of the Companies Act which would be the special law applicable. Firstly, what Section 100-A bars is an appeal from the judgment and decree of a single judge. In the present case, the Company Court exercising power under Section 10-F, passes no judgment and decree. The Company Court exercising jurisdiction under Section 10-F, in the first place, is not sitting in appeal from an original decree and order as is the first requirement of Section 100-A. The term order in this context must mean an order defined under Section 2(14) of the Code which requires it to be that of the Civil Court. The Company Law Board exercising jurisdiction under Section 397 and 398 of the Companies Act is not a Civil Court. Secondly, the order of the company Judge in a 10-F Appeal is not a judgment and decree within the meaning of the Code of Civil Procedure. No other provision to limit or affect the rights under Section 483 is shown to us.

23. For the reasons stated above, we do not find any merit on the objection to the maintainability of this Appeal on the points raised by Mr. Sibal. On other other hand, on the merits of the appeal we find arguable points. Hence, the Appeal is admitted. “

The Apex Court recently had an occasion to consider the provisions of Section 100-A C.P.C. A Constitution Bench of the Apex Court had occasion to consider Section 104(1) and (2) and Section 100-A C.P.C. as amended in P.S. Sathappan Vs. Andhra Bank Ltd. 2004 (11) SCC 672. The question for consideration was as to whether Section 100-A also excluded Letters Patent Appeal which was expressly saved under Section 100 (4) (1) C.P.C. Following was laid down in paragraphs 30 and 67 of the judgment which are quoted below:

“30. 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-clause (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 case, 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 100A. The present Section 100A 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 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 100A 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 100A nor Section 104(2) barred a Letters Patent Appeal.

67. Once, however, a right of appeal either in terms of sub-section (1) of Section 104 or Letters Patent is availed of, there would not be any further right of appeal from the appellate order in view of sub-section (2) of Section 104, for the simple reason, that Letters Patent also provides for only one appeal, i.e. from a single Judge of a High Court to a Division Bench. It may be true that in certain cases, Letters Patent Appeals are available even from an appellate order passed by a learned single Judge of the High Court to a Division Bench but the same was permissible only when there was no bar thereto and subject to the condition laid down in clause 15 itself. We may notice that when a first appeal or second appeal was

disposed of by a single Judge, a Letters Patent Appeal had been held to be maintainable therefrom only because there existed no bar in relation thereto. Such a bar has now been created by reason of Section 100-A of the Code. No appeal would, therefore, be maintainable when there exists a statutory bar. When the Parliament enacts a law it is presumed to know the existence of other statutes. Thus, in a given case, bar created for preferring an appeal expressly cannot be circumscribed by making a claim by finding out a source thereof in another statute.”

The Apex Court in the above judgment clearly laid down that Section 100-A as amended by 2002, Amendment Act clearly indicated that legislature which wanted to exclude Letters Patent Appeal it specifically did so. Section 100-A is also quoted below:

"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."

A perusal of Section 100-A indicates that Section begins with non-obstante clause. Section provides (i) Notwithstanding anything contained in any Letters Patent for any High Court (ii) or any other instrument having the force of law and (iii) or in any other law for the time being in force. The Section indicates that where any appeal from an original or appellate decree or order is heard and decided by the learned Single Judge of the High Court no further appeal shall lie notwithstanding the above three situations mentioned. The words “any other law for the time being in force” shall also cover the appeal under Section 483 of the Companies Act. Thus, even if nothing can be read in Section 483 excluding an appeal against an order of learned Single Judge of the High Court passed in exercise of appellate jurisdiction before the Division Bench, appeal against an order of the learned Single Judge passed in exercise of appellate jurisdiction is excluded under Section 100-A Civil Procedure Code. The Apex Court has recently occasion to consider both Section 483 of the Companies Act as well as Section 100-A C.P.C. in Kamal Kumar Dutta & Anr. Vs. Ruby General



Hospital Ltd & Ors, 2006 (7) SCC 613.

In the above case, a petition under Sections 397 and 398 of the Companies Act was filed before the Company Law Board. Company Law Board issued several directions on 29/10/1999. Against which an appeal was filed before the learned Company Judge under Section 10 F of the Companies Act. Learned Company Judge allowed the appeal. Learned Single Judge set-aside the order of the Company Law Board against which order of the learned Single Judge, Special Leave to Appeal was filed in the Apex Court. One of the preliminary objection was raised before the Apex Court that the appellant had a right of appeal under Clause 15 of the Letters Patent Appeal before the High Court, hence the appeal before the Supreme Court be not entertained. In the above context, the Apex Court examined the preliminary objection. The Apex Court noticed both the contentions that the appeal before the Division Bench shall lie under Section 483 of the Companies Act as well as Clause 15 of the Letters Patent Appeal. Following was laid down in paragraph 23 which is quoted below:

“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 the CLB and against that appeal has been provided before the High Court under Section 10F 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 learned single Judge hears an appeal from the original order. Original order in the present case was passed by the CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under section 10F of the Act before the High Court. Learned single Judge having passed an order, no further appeal will lie as the 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 in 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 100A. 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 itself. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising Letters Patent in a matter where a single Judge has decided the appeal from original order, has been taken away and it cannot be invoked in the present context. There is no two opinion in the matter that when the CLB exercises 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, the 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.”

The Division Bench of the Bombay High Court in Maharashtra Power Development Corporation Ltd., on which the learned counsel for the appellant has placed reliance was specifically considered by the Apex Court in the case of Kamal Kumar Dutta (supra). In paragraph 25 it was laid down that the said judgment does not lay down the correct law. Following was laid down in paragraph 25 which is quoted below:

“25. In this connection, our attention was invited to a decision of the Bombay High Court in Maharashtra Power Development Corpn. Ltd. Vs. 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.”

In view of the foregoing discussion, it is clear that even if under Section 483, there was no condition prohibiting an appeal against an order of the learned Single Judge passed in appellate exercise of jurisdiction, the said exclusion has been now specifically provided in by the Legislature under Section 100-A C.P.C. The judgment of the Apex Court in Kamal Kumar Dutta (supra) applies with full force in the facts of the present case.

In the present case, the order impugned was passed by the learned Single Judge in Civil Misc. Appeal/Objection 85/2007. An application for correction was moved in the order which has also been rejected. The learned Single Judge decided the appeal/objection against

the report of the Official Liquidator exercising power under Rule 164 of the Company Rules.

Rule 164 of the Company Rules is quoted below:

**“164. Appeal by creditor.**-If a creditor is dissatisfied with the decision of the Liquidator in respect of his proof, the creditor may, not later than 21 days from the date of service of the notice upon him of the decision of the Liquidator, appeal to the Court against the decision. The appeal shall be made by a Judge’s summons, supported by an affidavit which shall set out the grounds of such appeal, and notice of the appeal shall be given to the Liquidator. On such appeal, the Court shall have all the powers of an appellate Court under the Code.”

The application moved for correction in the order passed in the appellate exercise of jurisdiction by the learned Single Judge clearly bars further appeal under Section 483 of the Companies Act, as well as Letters Patent as laid down by the Apex Court in the case of Kamal Kumar Dutta (supra).

In view of the foregoing discussion, the preliminary objection raised by Shri Ashok Mehta is upheld and this appeal is dismissed as not maintainable.

**18/12/2009**

**SB**