

Vidya Bharti Chinmaya Vidyalaya through
its Chairman Sri Manas Kumar Mishra & Anr. Appellants
Versus

Subra Palit Respondent

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Appellants : Mr. V.P. Singh, Sr. Advocate
& Mrs. Rashmi Kumar, Advocate
For the Respondents : Mr. Anil Kumar Sinha, Sr. Advocate
& Mr. Raunak Sahay, Advocate

Order No. 20 : Dated 25th April, 2019

Aniruddha Bose, CJ.

The dispute involved in this appeal relates to service related controversy of a teaching staff of Vidya Bharti Chinmaya Vidyalaya (the school). The said teaching staff being respondent in this appeal had approached the Jharkhand Education Tribunal constituted under the Jharkhand Education Tribunal Act, 2005 and was successful there. The said Act provides for appeal against the orders/directions/judgments passed by the Tribunal before this Court under Section 16 thereof. But under the said Act, there is no provision for further intra-court appeal. As per the subsisting Rules of this Court, an appeal against the Tribunal is to be heard by a learned Single Judge of this Court. The school management challenged the legality of the order of the Tribunal in appeal before a learned Single Judge of this Court. That appeal was also dismissed. Against that judgment of dismissal the present appeal

has been preferred, registered as A.C. (D.B.) No. 02 of 2018.

2. Mr. Anil Kumar Sinha, learned senior counsel appearing for the respondent, assisted by Mr. Raunak Sahay, questions maintainability of this appeal. His submission, in substance, is that when a learned Single Judge of this Court delivers a judgment in exercise of appellate jurisdiction, no further intra-court appeal is maintainable. This point has been contested by the appellant, whose case has been argued by Mr. V.P. Singh, learned senior counsel, assisted by Mrs. Rashmi Kumar.

3. Our attention has been brought by the learned counsel for the appellants to Rule 84 of the High Court of Jharkhand Rules, 2001 and specifically sub-clause (z1) and (z2). These two sub-clauses specify :-

“**84.** Nomenclature, groupwise, of all the matters for its registration to be filed in the Court, in supersession of all the previous nomenclatures relating to matters, as is shown hereunder :

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| (z1) A.C.(D.B.) | Appeal case, i.e., any appeal before the Division Bench against the order of a Single Bench in any matter not specified herein, and not being a L.P.A. |
| (z2) A.C.(S.B.) | Appeal case, i.e., any appeal before a Single Bench against any judgment or order of any Court or Tribunal in any matter not specified herein. |

4. Two authorities of this Court have been relied upon by the appellants in support of their submission that an intra-court appeal is maintainable under clause 10 of the Letters Patent. The first one is a Bench decision of this Court in the case of **Banshi Mahto & Ors. Vs. Deputy Commissioner, Hazaribagh & Anr. [2005(3) JCR 119 (Jhr)]**. In this judgment, relying on Full

Bench decision of the Hon'ble Patna High Court in the case of **State of Bihar Vs. Smt. Sharda Devi [1997(1) PLJR 155]**, the Bench, in substance, upheld maintainability of an appeal under Clause 10 of the Letters Patent arising out of judgment of a Single Judge passed in appellate jurisdiction from an award under the Land Acquisition Act, 1894. The opinion of the Full Bench in the case of **Sharda Devi** (supra) was affirmed by the Hon'ble Supreme Court of India in the case of **Sharda Devi Vs. State of Bihar** (AIR 2002 SC 1357). Under the provisions of Section 54 of the 1894 Act, an appeal against an award passed in a land acquisition proceeding lies before the High Court. There is further provision for appeal before the Hon'ble Supreme Court from any decree passed on such appeal as per the said provision. Dealing with a similar provision under the Coal Bearing Areas (Acquisition & Development) Act, 1957 a Full Bench of this Court comprising of Three Hon'ble Judges had affirmed this view in the case of **Union of India Vs. Maklu Mahto (AIR 2006 Jhar 78)**. This decision was delivered on 2nd August, 2005. Primarily relying on these two authorities Mr. Singh has submitted that there is no bar on an intra-court appeal against a judgment passed by a learned Single Judge of this Court even in exercise of appellate jurisdiction.

5. The provision of Clause 10 of the Letters Patent stipulates:-

"10. 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 Patna from 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 of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 08 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 a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided."

6. In the case of **Iridium India Telecom Ltd., Vs. Motorola Inc. [AIR 2005 Supreme Court 514]** it was, inter-alia, held that in spite of the amending Act of 2002 of the Code of Civil Procedure, the provision of the Letters Patent survived in view of Section 129 of the said Code. That was a case dealing with the question of limitation in filing of written statement in a suit after amendment of the Code in terms of the order VIII Rule 1 thereof, as the said provision stood at that point of time. Referring to Clause 37 of the Letters Patent of the Hon'ble Bombay High Court, the Hon'ble Supreme Court found that such provision did not take away the High Court's power or jurisdiction trying a suit in its Original Side to exceed the timeframe stipulated by the amended Code. Such jurisdiction stood vested in the High Court under Clause 37 of the Letters Patent.

7. In the case of **Arun Dev Upadhyaya Vs. Integrated Sales Service Limited and another [(2016) 9 Supreme Court Cases 524]** an application was considered by a learned Single Judge of the High Court for enforcement of an award

passed in an international commercial arbitration. The learned Single Judge opined that the award was enforceable in India against one of the parties and passed a decree against it in terms of the award. The learned Single Judge also opined that the award was not maintainable against other parties as the Arbitral Tribunal could not have had passed the award against them. The said judgment was carried up in appeal before a Division Bench of the same Court. The question of maintainability of the appeal was raised before the Division Bench. The Bench, however, found that the appeal was maintainable. The Hon'ble Supreme Court, in further appeal by special leave addressed the question as to whether an appeal against the judgment of the learned Single Judge of the High Court in an international arbitration matter would lie to the Division Bench under Clause 15 of the Letters Patent of the Hon'ble Bombay High Court. Referring to the provisions of Section 50 of the Arbitration and Conciliation Act, 1996 as also Sections 5 and 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, the Hon'ble Supreme Court held that in such a situation an intra-court appeal under Section 15 of the Letters Patent was maintainable. One of the reasons on the basis of which this opinion was expressed by the Hon'ble Supreme Court was that Section 50 of the 1996 Act itself provided for appeal against such order.

8. Resisting the maintainability of the appeal Mr. Sinha had also cited the judgment of the Hon'ble High Court of Bombay in the case of **Mohanlal Chandmal Phafat and another Vs. State of Maharashtra [2018(2) BCR 257]**. This was a case arising out of Section 54 of the Land Acquisition Act only and the

Division Bench of the Hon'ble High Court of Bombay referring to Section 100A of the Code of Civil Procedure, which came into the statute book on 1st July, 2002 took a view different from that taken in the case of **Sharda Devi** (supra) as also **Maklu Mahto** (supra). Referring to Section 100A of the Code, the Bench held that the Letters Patent Appeal against the order of the learned Single Judge passed in First Appeal was not maintainable. The judgment of the Hon'ble Supreme Court in the case of **Radhey Shyam and another Vs. Chhabi Nath and others [(2015) 5 Supreme Court Cases 423]** was also cited before us. But in that judgment, what has been held, in substance, is that judicial orders of civil courts are not amenable to the Constitutional Writ Jurisdiction of the High Court, but could be amenable to the jurisdiction of the High Court under Article 227 of the Constitution of India. Ratio of this judgment is not applicable to the facts of the present case. In the case of **Life Insurance Corporation of India Vs. Nandini J. Shah and others [AIR 2018 Supreme Court 1197]** the principle of law laid down is that Letters Patent Appeal against an order of a learned Single Judge passed in exercise of jurisdiction under Article 227 of the Constitution of India would not be maintainable. This case also has no application in the present appeal. The other authority cited before us is the case of **Ram Kishan Fauji Vs. State of Haryana & Ors. [(2017) 5 SCC 533]**. In this decision it has been held that a Letters Patent Appeal would not be maintainable even in a writ proceeding brought to quash an F.I.R. Such proceeding would bear the characteristic of a case connected with criminal jurisdiction. The ratio of this judgment also does not have any impact on the preliminary point we are dealing with in this

proceeding.

9. So far as this Court is concerned, barring the two authorities referred to above following the case of **Sharda Devi** (supra), no other authority has been cited in support of the proposition of law on maintainability of this appeal. The case of **Sharda Devi** (supra) arose out of a judgment of a learned Single Judge delivered in appeal against an award under Section 54 of the Act 1 of 1894. This judgment was delivered on 1st May, 1996 when the aforesaid provisions of Section 100A of the Code of Civil Procedure, 1908 had not found its way into the statute book. In such situation, an intra-court appeal was held to be maintainable.

The provisions of Section 100-A of the Code provide:

"100-A. No further appeal in certain cases.– Notwithstanding anything contained in any Letters Patent for any High Court or in any 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."

10. It has also been submitted on behalf of the appellant that such appeal is maintainable under the Jharkhand High Court Rules, 2001. In support of this submission, sub-rules (z1) and (z2) of Rule 84 thereof has been referred to. These sub-rules have been reproduced earlier in this order. But as the substantive part of the said Rule suggests, the same only specifies the nomenclature of the nature of the proceedings. These two sub-rules do not create any substantive right of appeal. Sub-rule (z2) specifies the nomenclature for an appeal before a Single Judge against any judgment or order of any Court or Tribunal not specified otherwise in the said Rules. Sub-rule (z1) specifies the nomenclature for any appeal before the Division Bench against an

order of a Single Judge in any matter not specified in the Rules, where the appeal is not under Letters Patent. But these Rules cannot be construed to imply that appeal against every judgment or order of a Single Judge of this Court registered as A.C. (S.B.) lies before a Division Bench.

11. Our own opinion is that Section 100A of the Code having specifically excluded even a Letters Patent Appeal, an appeal from a judgment of a learned Single Judge passed in exercise of appellate jurisdiction would not be maintainable before a Division Bench under Clause 10 of the Letters Patent. But that is our view which is running contrary to the Full Bench decision of this Court in the case of **Maklu Mahto** (supra). There is, however, another decision of a Full Bench comprising of three Hon'ble Judges in the case of **Satya Narayan Agiwal & Another Vs. State Bank of India & Ors. [2005 (3) JLJR 230 (FB)]** in which Letters Patent Appeal against a judgment of a learned Single Judge delivered in First Appeal over a judgment and decree passed in a money suit was held to be not maintainable. This decision of the Full Bench (2-1 majority view) was inter-alia founded upon the provisions of Section 100-A of the Code.

12. The Hon'ble Supreme Court has also examined this specific provision in the case of **Geeta Devi and others Vs. Puran Ram Raigar and another [(2010) 9 Supreme Court Cases 84]**. It has been held in this decision :

"3. In our opinion, the Division Bench of the High Court has rightly held that the appeal against the order of the learned Single Judge dated 7-8-2006 did not lie in view of Section 100-A CPC. The learned Single Judge had decided Miscellaneous Appeal No. 2777 of 2003 against the award of the Motor Accidents Claims Tribunal. In our opinion, this intra-court appeal in the High Court was not maintainable in view of Section 100-A CPC notwithstanding anything in the High Court Rules or the

Letters Patent to the contrary. Hence, the appeal was rightly dismissed by the Division Bench of the High Court and this appeal is, therefore, dismissed.

4. However, dismissal of this appeal will not prevent the appellants from filing an SLP directly against the judgment of the learned Single Judge dated 7-8-2006 dismissing the miscellaneous appeal arising out of the impugned award dated 20-9-2003 passed by the Motor Accidents Claims Tribunal, Shahpura, District Jaipur in Claim Petition No. 177 of 2002, if so advised and subject to all just exceptions including limitation. No costs."

13. Submission of Mr. Singh is that the aforesaid decision has not acquired the status of precedent and hence is not binding on us under Article 141 of the Constitution of India. But in paragraph-3 of this judgment we find the position of law has been clearly explained by the Hon'ble Supreme Court. There is another judgment of this Court in the case of **Syed Mohammad Sharfullah Vs. Principal, Delhi Public School, Dhanbad and others [2012 (1) JLJR 214]** in which the view of the Hon'ble Supreme Court as expressed in **Geeta Devi's** case (supra) has been accepted and an intra-court appeal has been held to be not maintainable against an order passed by a learned Single Judge of this Court in appellate jurisdiction. But in this judgment the Full Bench decision delivered in the case of **Maklu Mahto** (supra) was not considered. There, thus, are conflicting opinions of two Hon'ble Full Benches of this Court on this point and for this reason as a Full Bench judgment has binding precedent value for us, we are of the view that the issue raised in this appeal at the preliminary stage may be referred to a larger bench comprising of five Hon'ble Judges for examining this question.

14. Let the file be placed before the Chief Justice in the administrative side for considering constitution of a Full Bench comprising of five Hon'ble Judges of this Court for determining the

following question:-

“Whether, having regard to the provisions of Section 100A of the Code of Civil Procedure, an appeal before a Division Bench of this Court is maintainable under clause 10 of the Letters Patent against a judgment of a learned Single Judge of this Court delivered in exercise of appellate jurisdiction under a statute, which statute does not provide for further intra-court appeal?”

(Aniruddha Bose, C.J.)

(Ratnaker Bhengra, J.)

AKT/SB