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C.A.No. 689 OF 1998

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Item No.	Court No.	Section
108	03	XII

S U P R E M E C O U R T O F I N D I A  
Record of Proceedings

Civil Appeal No. 689 of 1998

P.S. Sathappan	Appellant (s)
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vs.

Andhra Bank Ltd. & Ors.	Respondent(s)
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(with office report)

Date:09/08/2001 This/These matter(s) was/were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For the Appellant (s): Mr. R Sundaravardan, Sr. Adv.  
Mr. R N Keshwani, Mr. Sanjay Kunr and  
Mr. Ramlal Roy, Advs.

For the Respondent(s): Mr. V Balachandran, Adv.  
  
Mr. P P Singh, Adv.  
  
Mr. K Ram Kumar, Adv.  
Mr. B Sridhar, Adv.  
  
Ms. Asha Gopalan Nair, Adv. (NP)

UPON hearing the counsel the Court made the following  
ORDER

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Against an application filed before the executing court for setting aside the court auction which was dismissed, an appeal was filed before the High Court. On the dismissal of the same by the Single Judge, a letters patent appeal was filed. A Full Bench relying upon a decision of this Court in New@  
CCC  
Kenilworth Hotel (P) Ltd. vs. Orissa State Financial@  
CC  
Corporation and Others, 1997 (3) SCC 462 came to the conclusion@  
CC  
that in view of the provisions of Section 104(2), C.P.C., appeal

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to the Division Bench was not maintainable. To the same effect

are two other decisions of this Court in Resham Singh Pyara@@  
CCCCCCCCCCCCCCCCCCCC  
Singh vs. Abdul Sattar, 1996 (1) SCC 49 and Vinita M.@@  
CCCC CCCCCCCCCCCCC CCCCCCCCCC  
Khanolkar vs. Pragna M. Pai and Others, 1998 (1) SCC 500.@@  
CCCCCCCC CCCCCCCCCCCCCCCCCCCCCCCCCC

Learned senior counsel for the appellant has drawn our  
attention to a decision of the Constitution Bench in Gulab Bai@@  
CCCCCCCCC  
and Anr. vs. Puniya, 1966 (2) SCR 102 and has contended that@@  
CCCCCCCC CCCCC  
the observations in the said judgment clearly support his  
contention that by virtue of provisions similar to Clause 15 of  
the Letters Patent an appeal could be filed against the judgment  
of the Single Judge.

We are aware of the fact that Clause 15 of the Letters  
Patent applicable to Madras High Court was similar to Clause  
10 applicable to Orissa High Court which was construed in the  
case of New Kenilworth (supra). This Court did not, in New@@  
CCCCCCCCCCCCCCCCCCCC CCCC  
Kenilworth's case, consider the effect of the decision in Gulab@@  
CCCCCCCCCCCCCCCCCCCC CCCCC  
Bai's case (supra). Furthermore, reference in Clause 15 of the@@  
CCCCCCCCCCCCCCCCCCCC

Letters Patent which excludes the applicability of the same in  
relation to a judgment passed in exercise of appellate  
jurisdiction in respect of a decree or order made in exercise of  
appellate jurisdiction by a court subordinate to the  
superintendence of the High Court would prima facie indicate  
that it is only where the Single Judge is hearing an appeal from  
an appellate order of the court subordinate to it that the said  
clause 15 would not apply.

In our opinion, the matter is not free from doubt,  
especially in view of the decision of the Constitution Bench in  
Gulab Bai's case [1966 (2) SCR 102] and it would be appropriate@@  
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therefore that the papers are placed before Hon'ble the Chief  
Justice for referring the case to a larger Bench, in view of not

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only the conflict in decisions which is stated to be there but  
also in view of the importance of the point in issue, namely,  
the effect of the provisions of Section 104(2) vis-a-vis Clause  
15 of the Letters Patent.

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(D.P. Walia)  
Court Master

(S.L. Goyal)  
Court Master