

ND IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10403 OF 2010
(Arising out of S.L.P. (C) No. 31500 of 2009)

CHHAGANBHAI RATI LAL PARMAR -- APPELLANT

VERSUS

THE SECRETARY, PANCHAYAT GRAM GRUH -- RESPONDENTS
NIRMAN & ORS.

O R D E R

D.K.JAIN, J.:

Leave granted.

2. Challenge in this appeal, by special leave, is to the order dated 9th March, 2009 passed by a Division Bench of the High Court of Gujarat whereby a letters patent appeal filed by the appellant has been dismissed in limine by a short order without examining merits thereof, affirming the order passed by the Single Judge in Special Civil Application No. 23027 of 2007.

3. In view of the order we propose to pass, we deem it unnecessary to state the facts giving rise to the appeal, as the case has had a chequered history, except to note that the

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appellant was appointed as a daily wager to a Class-IV post in the health sub-centre under the health wing of District Panchayat Godhra w.e.f 14th September, 1982. Apprehending removal from service, sometime in the year 1987, the appellant filed a suit in the Civil Court Godhra, claiming permanency on the basis of Government Resolution No. CH-1083/WV/Sachivalaya/Gandhinagar. The said suit was decreed in favour of the appellant. Being aggrieved, the respondents preferred an appeal before the High Court. However, this appeal was withdrawn. It appears that the respondents were

not responding to appellant's request for implementation of the Civil Court's decree and therefore, he preferred a Special Civil Application No. 2277/2007 before the High Court. The High Court disposed of the application, directing the appellant to make representation to the respondents. Vide letter dated 30th March, 2007, the respondents rejected the representation of the appellant, and held that no benefits accrued to the appellant for the period from 14th September, 1982 to 15th September, 1997 as the appellant was appointed on regular basis only from the latter date. Being dissatisfied, the appellant preferred Special Civil Application No. 23027 of 2007 before the High Court, which was dismissed. As aforementioned, by the impugned order, the letters patent

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appeal filed by the appellant has been dismissed by the High Court. The High Court order reads as follows :

"No case for interference is (sic) made out. The Appeal is dismissed."

4. Hence this appeal.
5. We have heard learned counsel for the parties. We are of the opinion that the order passed by the Division Bench, in exercise of its powers under the letters patent is clearly indefensible. It is trite that the scope and ambit of a letters patent appeal from a judgment of a Single Judge is much wider than an appeal under Section 100 of the Code of Civil Procedure, 1908 and Letters Patent Bench hearing an appeal from a Single Judge of the High Court in a first appeal heard by him is entitled to review even findings of fact. Therefore, an intra-court appeal under the Letters Patent is required to be considered and decided by the Division Bench of the High Court on the same footing as an appeal considered and decided by a Single Judge of the Court.
(See: Asha Devi Vs. Dukhi Sao & Anr.1)

6. In Sachida Nand Lal @ Sachida Nand Shah Vs. State of Bihar²,
in which one of us, (D.K. Jain, J.) was a member, it was
observed thus :

"Since the appeal before the learned Single Judge was
appeal from original decree i.e. first appeal, the
Division Bench ought to have considered the correctness or
otherwise of the order passed by the learned Single Judge
by exercising same powers as exercised by the learned
Single Judge in the appeal from original decree. The
letters patent before the Division Bench was not in the
nature of the appeal from an appellate decree i.e. second
appeal, but it was continuation of appeal from original
decree i.e. first appeal. In the circumstances, in our
opinion, the Division Bench committed an error of law in
dismissing the appeal in limine by a brief order quoted
hereinabove without considering the merits. The law on the
point is well settled as regards the power of the Division
Bench while dealing with and deciding a letters patent
appeal from an order passed by a Single Judge in exercise
of power as a court of appeal." (See also: Gaudiya Mission
Vs. Shobha Bose & Anr.³; New India Cooperative Housing
Society Limited Vs. Municipal Corporation of Greater
Mumbai & Anr.⁴)

7. Tested on the touch-stone of the afore-noted legal principle,
the impugned non-speaking order passed by the Division Bench of
the High Court dismissing the letters patent appeal being
cryptic cannot be said to be in accordance with law, and
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deserves to be set aside.

8. We accordingly, allow the appeal, set aside the impugned
order, and remand the matter back to the Division Bench of the

2 (2008) 17 SCC 596

3 (2008) 17 SCC 714

4 (2008) 9 SCC 694

osal High Court for being heard on merits, and disp⁴
in

accordance with law. In the circumstances of the case, we make
no order as to costs.

