

(1992) 06 KL CK 0001

In the High Court Of Kerala

Case No : Unnumbered W.A. of 1991 in C.M.P. No. 17073/91 in O.P. No. 9800/91
and W.A. of 1091 in C.M.P. 12030/91 in O.P. No. 7132/91

K.S. Das

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-06-1992

Acts Referred:

Arbitration Act, 1940 — Section 19
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 43 Rule 1, Order 45 Rule 2, 104, 109
Constitution of India, 1950 — Article 12, 132, 133, 134, 135
Criminal Procedure Code, 1973 (CrPC) — Section 307, 374, 397(2), 432, 481
Government of India Act, 1935 — Section 205(1)
Kerala High Court Act, 1958 — Section 3, 4, 4(6), 5, 5(1)
Special Courts Act, 1979 — Section 11, 11(1)
States Reorganisation Act, 1956 — Section 52
Supreme Court Act, 1981 — Section 60(2)
Supreme Court of Judicature (Consolidation) Act, 1925 — Section 68(2)
Travancore-Cochin High Court (Amendment) Act, 1952 — Section 21
Travancore-Cochin High Court Act, 1925 — Section 18

Citation : (1992) 06 KL CK 0001

Hon'ble Judges : M. Jagannadha Rao, C.J.; Varghese Kalliat, J.; M.M. Pureed Pillay, J.; K.S. Paripooran, J.; K. John Mathew, J

Bench : Full Bench

Advocate : P.C. Chacko and Roy Chacko, in C.M.P. 17073 of 1991 and P. Narayanakurup, in C.M.P. 12030/91, for the Appellant; K. Ramakumar in C.M.P. 17073 of 1991 and M.K. Damodaran in C.M.P. 12030 of 1991, for the Respondent

Final Decision : Allowed

Judgement

M. Jagannadha Rao, C.J.—The question in these two matters which has been referred to this larger Bench by a Full Bench consisting of three of us, is as follows:

Whether an appeal lies to a Division Bench u/s 5(i) of the Kerala High Court Act, 1958 against an interlocutory order in a Writ Petition, while the main Writ

Petition is pending and if so, what are the circumstances under which or the types of casts in which such an appeal would lie?

Before adverting to the question, it would be to state, briefly, the face in the two unnumbered appeal. In the first of the matter the Writ Appeal is preferred by the Writ Petitioners against the order in C.M.P. 17073/91 in O.P. 9800/91. The dispute relates to the auction of toddy shops in Vaikkom and Kadumuruthy ranges for three years from 1st April 1991 by the Collector. The Writ Petitioner was the successful bidders for Rs. 17,20,00. The seventh Respondent filed an earlier O.P. 3978 of 1991 challenging the sale confirmation, contending that he was forcibly kept out of the auction and he was prepared for Rs. 27,20,000. The auction was confirmed and the licences were issued in favour of the Writ Petitioners pending that Writ Petition. Later that Writ Petition was disposed of with a direction to the State that the events leading to the auction and its confirmation may be elaborately Considered by the authorities in the light of the allegations made by the seventh Respondent. Thereafter, the Special Secretary (Taxes) heard the matter and passed Ext. P-4 order on 19th September 1991. It was held that the action of the District Collector was not in order and that there was truth in the seventh Respondent's allegations as to his being forcibly prevented from participating in the negotiations. The earlier sale and confirmation made in favour of the Writ Petitioners was cancelled and the Excise Commissioner was directed to confirm the sale for three years from 1st April 1991 in favour of the seventh Respondent for Rs. 27,20,000, Thereafter, the Board of Revenue issued Ext. P-5 order dated 24th September 1991 confirming the sale in favour of the seventh Respondent. The Original Petition No. 9800 of 1991 was filed challenging Exits. P-4 and P-5 orders. The learned Single Judge, after hearing all the parties in the C.M.P. stated that "prima facie" he had no reason to think that there was any circumstance justifying stay of the operation of Ext. P-4, that the speed at which Exits. P-4 and P-5 were sought to be implemented by execution of agreements and grant of licenses in favour of the seventh Respondent could only be en account of the exigencies of the situation and that that did not show any malafides. It was further stated that whether Exits. P-4 and. P-5 were liable to be interfered with or not, was a matter that could be considered only after hearing the contentions of all concerned in detail and that if Petitioners were liable to succeed, their interests could be properly safeguarded. On these grounds, stay of Exits. P-4 and P-5 was refused by order dated 27th September 1991. It is this order in the C.M.P. that is appealed against.

2. The second of the Writ Appeals arises out of C.M.P. 12030 of 1991 in O.P. 7132 of 1991 dated 15th July 1991. The Appellants are Respondents 4 and 5 in the O.P. The Appellants were nominated to the Board of Directors of a Co-operative Bank as per Ext. P-1 order of the Registrar of Co-operative Societies dated 31st August 1987. Later the Joint Registrar nominated the two Writ Petitioners on 10th July 1991 but again withdrew the same under Ext. P-2. The said withdrawal was challenged on the ground that once the nomination of the writ Petitioners was made the same could not be withdrawn since their term

would be co-terminus with that of the elected members. The learned Single Judge admitted the Original Petition and granted interim stay on 15th July 1991, staying the operation of Ext. P-2 order pending the Original Petition. The Appellants filed a counter and when the C.M.P. came up on 30th September 1991, the learned Judge initially passed an order vacating the stay and posted the matter for orders on 3rd October 1991, but when the matter came up on 3rd October 1991, before it was signed the learned Judge thought it fit to continue the stay and therefore deleted the order vacating stay and posted the Original Petition for final hearing. The learned Judge, in our view, was entitled to alter the order in the presence, of the counsel before it was signed. However, as the order passed on 3rd October 1991 was one for continuing the interim stay for the period during the pendency of the Original Petition and not merely pending the C.M.P., we shall assume that it could be treated as a disposal of the C.M.P. It is this order of stay that is challenged in the Writ Appeal.

3. At the outset, it is necessary to refer to the provisions of Section 5 of the Kerala High Court Act, 1958 as amended in 1969. They read as follows:

5. Appeal from, judgment or order of Single Judge.- An appeal shall lie to a Bench of two Judges from:

- (i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or
- (ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate Court; or
- (iii) a judgment of a "Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate Court, if the Judge who passed such judgment certifies that the case is a fit one for appeal.

4. The question that falls for consideration in these appeals is whether the Kerala Legislature meant, by the words "judgment or Order in Section 5(1), interlocutory orders finally passed in Miscellaneous Petitions, pending the Original Petition, and if so, what were the categories of orders the Legislature contemplated as being appeal able?

5. Learned Counsel for the Appellants, Sri P.C. Chacko and Sri K. Narayana Kurup contended that these orders in the C.M.Ps. were orders of moment and seriously affected the rights of the parties and though they do not dispose of the Writ Petitions, they would still be appeal able. Learned Advocate General, as we understood him, submitted that the earlier decisions of this Court had taken the view that such orders are not appeal able u/s 5(i) to a Division Bench and that the said view does not warrant to be disturbed. Sri K. Ramakumar for the Respondents in the first case contended that the orders in these C.M.Ps. in question are not appeal able and that Section 5(i) was not intended to attract such orders. Sri M.K. Damodaran for the Respondents in the second case,

accepted that appeals would lie in certain cases. The President of the Bar Association, Sri Mathews P. Mathew also contended that appeal would lie in certain cases.

6. The arguments of the counsel touched various aspects of the provisions of the Kerala High Court Act, 1958 and also those of the Travancore-Cochin High Court Act, 1125, Clause 15 of the Letters Patent (Madras), the Kerala Civil Courts Act, Section 397(2) of the Code of Criminal Procedure, 1974, Section 11 of the Special Courts Act, provisions of the Rent Control Laws regarding appeals, as well as Articles 132 to 136 of the Constitution of India, etc. A very large number of rulings connected with the above and other provisions were quoted by all the counsel. judgments of the English Courts were also cited. Dictionaries and Lexicons were quoted Reference was made to the provisions of the Bill, the debates in the Legislative Assembly, the resolutions of the High Court on the administrative side, before the Bill was passed. Practically, no material was left out. We are indeed thankful for the exhaustive arguments. If we have to set out the entirety of the arguments, this order would become too long- We, therefore, prefer to deal with the point on merits straightaway.

7. The relevant portions of the Kerala High Court Act, 1958, in so far as they are immediately relevant, in the context of appeals to Division Bench against matters dealt with under Article 325 of the Constitution of India are as follows:

Section 3. powers of a Single fudge.- The powers of the High Court in relation to the following matters may be exercised by a Singje Judge.

(3) Exercise of Original jurisdiction under any law for the time being in force,

(10) Exercise of the power under-

Clause (1) of Article 226 of the Constitution of India except where such power relates to the issue of a Writ of the nature of Habeas Corpus;

Section 4 - Power of Bench of two Judges. The powers of the High Court in relation to the following matters may be exercised by a Bench of two Judges....

(b) An appeal from any original judgment order or decree passed by a Single Judge.

Section 5 - Appeal from judgment or order of Single Judge.- An appeal shall lie to a Bench of two Judges from-

(i) judgment or order of a single judge in the exercise of (sic); or

(ii) judgment of a single judge in the exercise of appellate jurisdiction in respect of a decree or order (sic) in the exercise of original jurisdiction by a sub(sic) Court; or

(iii) a Judgment of a Single Judge in the exercise of appellate jurisdiction In respect of a decree or, order in the exercise of appellate jurisdiction by a subordinate Court, if the Judge who passed such judgment Certifies that the case

is a fit for appeal.

(Clause (ii) was brought by the amendment Act of 1966).

8. The contention for the Appellants, as already stated, is that the words "judgment or order" would take in an interlocutory order passed by the Single Judge in exercise of jurisdiction under Article 226 of the Constitution, such order being ancillary to the main Writ Petition and not disposing, of the Writ Petition itself, but provided it was meant to be in force during the pendency of the Writ Petition and is of serious consequence to one or the other of the parties, is one of moment for them and is working serious hardship.

9. The scope of the words "judgment or order" used in Section 5(i) has, therefore, to be determined. Incidentally, the purpose and meaning of Section 4(6) which uses the words any original judgment, order or decree passed by ,a Single Judge" also falls to be decided.

10. (I) The position of the Travancore-Cochin High Court before 9th March 1959, when the Kerala High Court Act Carrie into force. The Travancore-Cochin High Court Act, 1125. Section 18 provided that, "subject to the provisions of that Act, the High Court shall have and exercise all the jurisdiction and powers vested in it by the Act and any Other law in force or which may "hereafter" come into force and any jurisdiction vested in the existing High Court immediately prior to the coming into force of that Act". Section 20 provided for the powers of a Single Judge of the High Court. (This, corresponds to Section 3 of the Kerala High Court Act, 1958). Sub-clause 4(A)(x) related to the exercise of the powers conferred by Clause (1) of Article 226 of the Constitution of India read with Article 238 thereof. Section 21 provided for the powers of a Division Bench of two Judges- Section 21 states that the Division Bench is empowered:

(i) to hear and decide appeals against orders passed by a Single Judge under Sub-clause A(x) of Clause (4) of Section 20; to hear and decide appeals against judgments passed by a Single Judge under Sub-clause (C) of Clause (4) of Section 20 where the Judges who passed the judgment declares that the case is a fit one for appeal and to hear and decide applications or appeals or other proceedings that a Single Judge may refer u/s 20;

(ii) (a) * * * (b) to hear and decide all appeals preferred from such orders as are provided in Section 104 of the Code of Civil Procedure, 1808, of a Single Judge of the High Court passed in exercise of the original jurisdiction;

(c) to hear and decided appeals preferred against convictions or sentences and orders of acquittal passed by a Single Judge of the High Court in the exercise Of his original jurisdiction;

(emphasis supplied)

11. It is necessary to notice that with effect from 1st November 1958, certain areas specified in the States Reorganization Act, 1956 (hereinafter called the

S.R. Act) were transferred to the new State of Kerala when the Kerala State was formed. These territories were (i) the Malabar District (excluding the islands of Laccadive and Minicoy) and (ii) the Kasaragod Taluk of South Canara district. Both these territories were admittedly comprised in the former State of Madras. Parti v. of the S.R. Act deals with High Courts for new States. u/s 49(2), as from 1st November 1956, the High Court of Kerala was established and u/s 50(1), the High Courts of all the Part B States (except to the extent specified)-including the High Court of Travancore-Cochin - were to cease to function and were abolished. Section 52 of the S.R. Act is important. It reads:

52. The High Court for a new State shall have, in respect of any part of the territories included in the new State, all such original appellate and other jurisdictions as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court of an existing State.

Section 54 provided that, "subject to the provisions of this pari", the law it force immediately before the, appointed day with respect to practice and procedure, in the High Court for the corresponding State shall, with, the necessary modifications, apply in relation to the High Court for a new State. and accordingly, the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedures, as are, immediately before the appointed day, exercisable by the High Court for the corresponding State. Section 57 deals with powers of the Judges and states that the law in force immediately before the appointed day relating to the powers of the Chief Justice, Single Judges and Division Courts of the High Court for corresponding State and with respect to matters ancillary to the exercise of those powers shall, with necessary modifications, apply in relation to the High Court for a new State. Section 69 states that nothing in Part V shall affect the application to the High Court for a new State of any provisions of the Constitution, and this part shall have effect, subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision.

12. Therefore, the Letters Patent (Madras) which was applicable to the transferred, territories (Malabar area and Kasaragod Taluk as per Section 5(1)(b) of S.R. Act), including Clause 15 thereof continued to apply even after 1st November 1956 when those territories came under the jurisdiction of the Kerala High Court. In other words, the Kerala High Court was, if such a situation arose, entitled to exercise powers under Clause 15 of the Letters Patent (Madras) in so far as matters arising from the said transferred territories, till the Kerala Legislature would make any provision taking away the said power or jurisdiction. The Mysore High Court in *Hansansab v. Mudakappa Laxmappa Nalwadi* 1959 Mys L.J. 270 (decided by Malimath, J.- as he then was) and in *Rao Saheb Kasiirao Desai v. Tammanna Krishnaji Bommaji* ILR 1981 Mys. 708, (decided by Iqbal Husain J.), has held that in cases arising from the erstwhile Bombay areas

transferred to Mysore, the Mysore High Court could exercise power under the Letters Patent (Bombay) in view of Section 52. The said provision has also been relied upon by the Supreme Court in *Dhedh Nathu v. Langha Nathu Krishnaji Bommaji* AIR 1971 S.C. 800 and it was held that Section 52 "preserved the original, appellate and other Jurisdictions which was under the law in force immediately before the appointed day, exercisable in respect of the territories within the State Saurashtra". In fact, the right of appeal under the Saurashtra law was preserved and any restriction under that law, would go.

13. Therefore, as on the day when the Kerala High Court Act, 1958 came into force (9th March 1959), the Letters Patent (Madras) including Clause 15 thereof was applicable to the High Court of Kerala in respect of matters arising from the erstwhile State of Madras. In respect of the areas of the former Travancore-Cochin State, the position was that Section 21 of the Travancore-Cochin High Court Act, 1925 (as amended in 1952) applied. So far as interlocutory orders were concerned, they were appealable before a Division Bench if they arose from the Malabar area and if they answered the test of being "judgments" under clause 15 of the Letters Patent (Madras), as per the principles laid down by the Madras High Court in *Tuljaramrow v. Algappa Chettiaar* ILR Mad 1 (F.B.) and *K.G. Rangaswami Chettiar and Co. and Others Vs. K.R. Eswaramurthy Goundar*, . So far as the Travancore-Cochin area is concerned* there does not appear to be any decision of the Travancore-Cochin High Court, deciding, one way or the other, as to whether the "order" in Section 21(i) of the Single Judges made u/s 20(4)(A) (x) made in exercise of powers under Clause 226(1) of the Constitution of India, included interlocutory orders passed pending Writ Petitions which orders were matters of moment for the parties and substantially affected their rights or caused serious injustice pending disposal of the main Writ Petition. This was the position "when the Kerala, Legislature prepared the Bill which was ultimately passed in 1956. Can it, on those facts be said that the Kerala Legislature did not intend to retain the appellate powers of Division Benches against judgments or orders of Single Judges as in vogue so far as the territories transferred from Madras State are concerned? Did the Kerala Legislature think that the Travancore-Cochin High Court, in so far as Travancore-Cochin area is concerned, (in regard to which it was not decided whether the Court had such powers or not), need not have such appellate powers?

14. It will also have to be noticed that under the latter part of Section 21(i), Division Benches in Travancore-Cochin State could hear and decide appeals against "judgments" passed by Single Judge u/s 20(4)(c) where the Judge who passed the judgment declared the case to be a fit one for appeal in regard to Clause 15 of the Letters Patent, such "judgments" even in Miscellaneous Petitions in appeals filed under Second Appellate Jurisdiction, could be appealed against, provided the orders amounted to "judgments" as interpreted in *Tuljaram Raw's* case ILR 35 Mad 1 (F.B.). Again, u/s 21(ii)(b) of the Travancore-Cochin Act, orders passed by Single Judges of the High Court in exercise of Original Jurisdiction, could be appealed against to a Division Bench if they belonged to

the categories mentioned in Section 104 Code of Civil Procedure. In this latter class of cases, the main case would obviously be pending before the Single Judge in his Original Jurisdiction. The position so far as the first part of Section 21(i) is concerned as to whether the word "order" passed by Single Judge u/s 20(4)(A) (x) did or did not include orders in interlocutory applications was not decided by the Travancore-Cochin High Court one way or the other.

15. The Kerala High Courts Bill, 1957 was piloted by no less a person than Sri V.R. Krishna Iyer, who was the then Law Minister. In the first session on 3rd March 1958 when the Bill was taken up for discussion (see Kerala Legislative Assembly Debates, 1958, p. 378), Sri Krishna Iyer stated:

Mr. Speaker, Sir, so far as this Bill is concerned, we have taken into consideration the general practice obtaining in the various High Courts, the preponderant views of the Judges in the various High Court and the Letters Patent relating to the Madras High Court. We have consulted the Kerala High Court and have also considered the resolutions at the Law Minister's conference. All these things were taken into consideration and there has not been any wide departure made in the Bill from the settled or established practices in other States, and if it becomes necessary to restrict the powers of Single Judges, I think, that question can be taken up later after we gain some experience of the working of this pleasure, There is no departure introduced in this Bill.

(emphasis supplied)

At the second session of the Legislature on 24th August 1957, Sri Krishna Iyer again observed (see 1957 Debates P. 233):

I move that the Bill be referred to a Select Committee. In the meanwhile, I shall very briefly explain the purpose of the Bill, it is really consequential upon the States Reorganisation. The Travancore-Cochin High Court translated itself into the Kerala High Court and the jurisdiction and powers of the High Court happened to be different in the Malabar area from those in the Travancore-Cochin area. The powers conferred were, therefore, divergent. In the Travancore-Cochin High Court, the powers were enjoined by the Travancore-Cochin Act, 1985 (1125). So far as the Madras High Court is concerned, its powers are confined by (1) the Letters Patent relating to the Madras High Court, (2) the Madras Appellate Jurisdiction Rules and (3) the Madras Ordinary Original Jurisdiction Rules. When the High Court deals with cases coming from the Travancore-Cochin area, it will have to exercise a set of Rules and when it deals with cases coming from the Malabar area, it will have to exercise another set of rules. That is an anomalous state of affairs. To unify the Jurisdiction of the High Court, this Bill is being placed before the House for consideration, It consists of various clauses. Some of them require detailed considerations. That is why Improve that the Bill fee referred to a Select Committee.

(emphasis supplied)

It will be noticed that the Bill as moved contained Clause 6(6) (which became Section 6(4) of the Act of 1958) and contained Clause 7 (which became Section 5 of the Act of 1958) we have said that Sub-clause (ii) of Section 5 was introduced in 1966 and the section was split up into three clauses as it now stands. Therefore; the provisions as to appeal to Division Benches from "judgment or Order" of Single Judges made in exercise of Writ Jurisdiction under Article 226(1) of the Constitution of India as now contained in Section 5(i) of the Act were there in the Bill as introduced in the Assembly. The provision corresponding to Section 4(6) was also there in the Bill. The observations of Sri Krishna Iyer were" made in that context.

16. The Report of the Select Committee of which Shri V.R. Krishna Iyer was the Chairman is dated 24th October 1957. There were certain other modifications to clauses 5, 12, 13,- (with which we are not concerned; they do not concern Section 4(6) or Section 5 of the Act). Thereafter, in another session of the Legislature dated 24th November 1958, certain clauses of the Bill which would come under Entry 78 List I of the VII Schedule of the Constitution ("Constitution and Organisation of Courts") were omitted in view of a central legislation then proposed and the remaining clauses were re-numbered as they were within Entry 65 of List II ("Jurisdiction and Powers of all Courts except the Supreme Court"). It was contended for the opposition that the remaining provisions falling under Entry 65 of List II could also be dropped till a central law was made; but this was rejected. In that context, on 27th November 1958 Sri Krishna Iyer stated (1958 Debates p. 347):

If we now do not enact the other provisions, the result would be in Travancore-Cochin area, there would be one law, and in the Malabar area, another one. There would be practical difficulties. When an appeal comes from the Malabar area, it has to be disposed of in a certain way and if it is from the Travancore-Cochin area, in another way. Moreover, now-a-days the Jurisdiction of districts are changed. One village, formerly in the Malabar area may have been included in the Travancore-Cochin area. These things are unified by certain provisions after consulting the various High Courts, namely, Allahabad, Madras, Calcutta and Mysore. We have also got the approval of the Hon. High Court and the Chief Justice is of the opinion that these provisions are absolutely necessary in regard to the procedure in the High Court.

Sri A Thanu Pillai:

Sri V.R. Krishna Iyer: There is no Madras High Court Act There we have the Letters Patent.

(emphasis supplied)

The Bill was passed on the same day, rejecting the view point of the Opposition, that the Bill could be dropped pending central legislation.

17. Before parting with this aspect, we have to refer to certain resolutions of the

Full Court (i.e., the Kerala High Court). The first one is in December 1956 when the High Court proposed that " Sub-clause 9 (iii) of Clause 5 of the Bill (Single Judge"s powers) be altered as:

Article 226 except in the matter of Writs in the nature of Habeas Corpus, Article 227 and Article 228 of the Constitution of India;

The second one was that Sub-clause 6 of Clause 6 (powers of Division Bench) be altered as:

An application for the exercise of the powers conferred by Clause (1) of Article 226 of the Constitution of India in regard to Writs in the nature of Habeas Corpus or u/s 491 of the Code of Criminal Procedure, 1898;

The third one was that Sub-clause (6) of Clause 6 should be redrafted so that:

appeals from decisions of a Single Judge in regard to matters under Articles 226, 227 and 228 of the Constitution are also included within its scope or a specific section may be devoted to provide for such appeals.

It looks to us that Clause 5(10)(iii) of the Bill (corresponding to Section 3(10)(iii) of the Act, is in pursuance of the first suggestion; Clause 6 (5) of the Bill (corresponding to Section 4(5) of the Act) is in pursuance of the second suggestion and Clause 6 (6) of the Bill (corresponding to Section 4(6) of the Act) and Clause 7 (corresponding to Section 5 of the Act) are in pursuance to the third suggestion. (The other correspondence with the High-Court referred to in the proceedings of the Legislature, could not be traced).

18. The above is the Legislative history of the relevant provisions of the Kerala High Court Act, 1958. As to what extent the said proceedings of Legislature are relevant, is also a question that falls for consideration. We may point out that the Statement of Objects and Reasons appended to the Act are a reproduction of what Shri V.R. Krishna Iyer stated on 24th August 1957 and we are, therefore, refraining from reproducing the same once again.

II. Order, interlocutory or intermediate order, final order and judgment:

19. Before advertng to the principle of statutory interpretation applicable to the case, it will be necessary to refer to certain meanings, attributed by the Courts to the above expressions. It will then be easy to consider and decide which of the said meanings can be accepted in respect of the meaning of the words "judgment or order" used in Section 5(i) of the Act.

(A) Order.- The word "order" could mean any order either interlocutory or final. It may, in a much broader sense, include even an ad interim order. It was pointed out for the Respondents that the Appellants" contention might lead to orders relating to admission of the writ, adjournment of the case or the like, becoming appealable, which might lead to several absurdities. Learned Counsel for the Appellants, no doubt, Shri Narayana Kurup, placed strong reliance on the decision of the Supreme Court in *The Bharat Bank Ltd., Delhi Vs. Employees of*

the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, , where advertent to the word "order" used in Article 136 of the Constitution of India (as distinct from "final order" used in Article 133), Mahajan, J. (as he then was) observed at page 193:

The word "order" in Article 136 has not been qualified by the word "final". It is clear, therefore, that the power to grant special leave under this Article against an order of a Court could be exercised with respect to Interlocutory orders also.

(emphasis supplied)

To a similar effect are the observations of Fazal Ali, J. To the same effect are the observations of the Supreme Court in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . The Supreme Court had occasion to exercise powers used in Article 136, no doubt, in rare cases, even, against ad interim orders by the High Courts. Of course, it is not the Appellants' case that u/s 5(1) appeals should be against ad interim orders made in miscellaneous petitions under Article 226 of the Constitution of India, where life of the order would be only till the disposal of the said miscellaneous petitions. However, the word "order" in certain statutes has been given a restrictive meaning in several situations. The word "order" has come up for consideration in certain Rent Control Statutes. Dealing with Section 38(1) of the Delhi Rent Control Act, 1958 in *Central Bank of India Vs. Shri Gokal Chand*, , the Supreme Court observed:

In the context of Section 38(1), the words "every order of the Controller" made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding summoning of witnesses, discovery, production and inspection of documents, issue of commission for examination of witnesses, inspection of documents fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps, taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties.

(emphasis supplied)

Thus, the word "order" has been construed widely in some cases while in some other cases, it has been limited to orders which affect any right or liability and on that ground, purely procedural orders are held excluded from the meaning of the word "order", as shown below.

(B) Intermediate order v. interlocutory order:

Section 397(2) of the Code of Criminal Procedure, 1973, states as follows:

The powers of revision conferred by Sub-section (I) shall not be exercised in relation to any interlocutory order passed in any appeal, trial or other proceeding.

(emphasis supplied)

Construing the words "interlocutory order" in Section 397(2), the Supreme Court in *Amar Nath and Others Vs. State of Haryana and Another*, : 1977, held that revision lay. to the High Court against non-procedural matters. They meant by procedural matters, those orders like summoning of witnesses, adjourning cases, passing orders of bail, calling for reports or orders relating to steps in and of the pending proceedings. These types of orders were "interlocutory orders" against which no revision lay. According to their Lordships, orders which decide or touch upon important rights or liabilities of the parties or any order which substantially affects the right of the accused, or decides certain rights of the parties (these are later described as "intermediate orders" by Untwalia, J. in *Madhu Limaye Vs. The State of Maharashtra*, cannot be treated as interlocutory orders so as to bar a revision to the High Court. The decision of the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, and other cases were followed in *Amar Nath and Others Vs. State of Haryana and Another*, : 1977. After stating as above, Fazal Ali, J. drew support from cases decided under Letters Patent and observed at page 143 of the S.C.C.:

...it would appear that under the various provisions of the Letters Patent of the High Court in India, an appeal lies to a Division Bench from an order passed by a Single Judge and some High Courts have held that even though the order may appear to be an interlocutory one where it does decide one of the aspects of the rights of the parties it is appeal able. For instance, an order of a Single Judge granting a temporary injunction was held by a Full Bench of Allahabad High Court in *Standard Glass Beads Factory and Another Vs. Shri Dhar and Others*, appeal able. To the same effect are the decision of the Calcutta High Court in *Union of India (UOI) Vs. Khetra Mohan Banerjee*, , of the Lahore High Court in *Gokul Chand v. Sanwal Das* AIR 1920 Lah 326 of the Delhi High Court in *Begum Aftab Zamani v. Sri Lal Chand Khanna* AIR 1960 Del 85, and of the Jammu and Kashmir High Court in *Har Parshad Wali v. Naranjan Nath Mattoo* AIR 1959 J&K 139.

(emphasis supplied)

The above decision in *Amar Nath and Others Vs. State of Haryana and Another*, , was followed and explained by Untwalia J. in *Madhu Limaye Vs. The State of Maharashtra*, . That case also arose in the context of Section 397(2) of the Code of Criminal Procedure. Untwalia J. referred to the following passage in Halsbury's Laws of England (3rd., para 1608, pp. 744-745):

An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.

(emphasis supplied)

After advertent to the meaning of the words "final order" in certain cases- (to which we shall refer in due course), it was observed in the context of Section 397(2) of the Code of Criminal Procedure, that although the words occurring in the particular statute are plain and unambiguous, they have to be interpreted in a particular manner which could fit in the context of other provisions of the statute and bring about the real intention of the Legislature (R.M.D. Chamevrbangwalla v. Union of India AIR 1957 S.C. 626; The River Wear Commissioners v. William Adamton 1876 2 A.C. 743 . Orders revisable u/s 397(2) need not be either final orders which dispose of a case nor can they be every procedural order, pure and simple. The revisable orders were "intermediate orders" which affect or touch upon rights of parties or are matters of moment, even though the main case is pending in the same Court which passed the order. Untwallia, J. observed in Madhu Limaye Vs. The State of Maharashtra, :

In such a situation, it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being the converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final....but yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 997 is not meant to be attracted for such kinds of intermediate orders.

(emphasis supplied)

Thus, interlocutory orders" may mean purely procedural orders and not orders which affect or touch upon rights of parties or matters of moment, though the main case is not disposed of. In that sense, they are not final. But they are interlocutory orders which are not mere orders of a procedural nature, but can be treated as a kind of intermediate orders which affect or touch Upon rights of parties or are matters of moment. It all depends upon the context of the words in the Act taken as a whole and the intention of the Legislature. In such a case the word "order" or "interlocutory order" cannot be given its plain or grammatical meaning. The orders appeal able in Central Bank of India Vs. Shri Gokal Chand, , and those held revisable in Amar Nath and Others Vs. State of Haryana and Another, and Madhu Limaye Vs. The State of Maharashtra, are, therefore, of the "intermediate category.

20. However, in V.C. Shukla Vs. State through C.B.I., , the Supreme Court had again occasion to consider Section 11(1) of the Special Courts Act, 1979 which stated that an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court, to the Supreme Court, both on facts and law. The Supreme Court observed that, unlike in Section 397(2) of the Code of Criminal Procedure where the words "interlocutory order" were used in a wider sense, the said words in Section 11(1) have been used in contradiction with a "final order". If an order does not terminate a proceeding it is an interlocutory order, and no appeal lay to the Supreme Court. The purpose of

Section 11(1) of the Special Act, 1979 was held to be different from Section 397(2) of the Code of Criminal Procedure

(C) Final order.- The word "final order" has not been used either in Section 5(i) or Section 4(6) of the Kerala High Court Act, 1958, but as it is argued for the Respondents that the word "order" must take its colour from the word "judgment" used in Section 5(i), by prefixing the word "final", it becomes necessary to understand the meaning of the word "final order". The said word has been interpreted to have two different meanings; one rather wide and the other rather narrow. However, both the meanings, as we shall see, are obviously much narrower than the meaning of "intermediate order" referred to above.

21. The word "final order" occurs in Section 109 CPC and also appears in Articles 133 and 134 of the Constitution of India. A "final order" as distinguishable from an intermediate order passed while keeping the main case pending could mean an order by which, the entire dispute or the main case gets disposed of, nothing more remaining before the Court. Two types of final orders could be visualized: (A) where the entire matter will stand disposed of finally even if the order was just the other way about; and (B) where the matter will stand finally disposed of one way, but if it was the other way, it would become a pending matter. The first one corresponds to Lord Esher's view and the second corresponds to Lord Alverstone's view. According to Lord Esher in *Salaman v. Warner* 1891 (1) Q.B. 734, an order would be "final" if whichever way the case was decided, i.e., for the one party or the opposite party, it would dispose of the entire case once and for all i.e., as in (A) above. But it would be "interlocutory" if the result would be final when decided in one way and if it would re-open the matter if decided the other way i.e., as in (B) above. But according to Lord Alverstone, C. J. in *Bozson v. Altrincham Urban District Council* (1903) 1 K.B. 547 the order which while in favour of one party puts an end to it, would be a "final order", even though it may not dispose of the matter but revive the matter, if it had been decided the other way. Thus, according to Lord Alverstone both the (A) and (B) types of orders would be "final orders" while according to Lord Esher, M.R., only (A) type would be a "final order". The view of Lord Haisbury was also the same as Lord Alverstone. In latter cases, the approach of Lord Esher has been described as the "application approach" while the approach of Lord Alverstone and Lord Haisbury has been described as the "order approach". Lord Denning, in *Salter Rer and Co. v. Ghosh* 1971 (2) All E.R. 865, said that Lord Alverstone was right in logic while Lord Esher was right in experience. He, however, admitted that the question as to when an order was "final" or "interlocutory" was very uncertain, but preferred Lord Esher's view. The position continues to be so as in *Moram v. Lloyd* (1983) 2 All E.R. 200, and *White v. Brunton* (1984) 3 All. E.R. 1005.

22. Recently, the Privy Council, in *Haron v. Central Securities* (1982) 2 All. E.R. 481 (P.C.), in a case arising from Malaysia, did not think fit to disturb the view of the Malaysian Courts which position continues to be so as in *Moram v. Lloyd* (1983) 2 All E.R. 200, and The Privy Council also pointed out that the Court of

Appeal's decision as to whether any order passed by it was final or interlocutory was the last word in view of Section 68(2) of the Supreme Court of Judicature (Consolidated) Act, 1925 now re-enacted in Section 60(2) of the Supreme Court Act, 1981.

23. In two cases arising from Australia, namely, *Tampion v. Anderson* (1973) 4 A.L.J.R. 11 (P.C.), and *Becker v. Marion City Corporation* (1977) A.C. 271 (P.C), it was mentioned that the Australian Courts appeared to prefer the English view taut it was admitted that the English decisions were difficult to reconcile. The decisions of the Australian High Court in *Hall v. Nominal Defendant* (1966) C.L.R. 423, *Licul v. Corney* (1976) 50 A.L.J.R. 439, *Port of Melbourne Authority v. Anshah Proprietary Ltd.* (1980) 147 C.L.R 35, however, appear to follow the "order" approach of Lord Alverstone as against *Can v. Finance Corporation*, (1980) 147 C.L.R 248, which appears to follow the "application" approach of Lord Esher.

24. The Canadian Supreme Court in *Hudon v. Trembley* (1931) S.C.R 624, while construing the word "final judgment" in the Supreme Court Act, followed *Salaman v. Warner* (1891) 1 Q.B. 734, and adopted Lord Esher's view. But the above decision in *Hudon v. Trembley* (1931) S.C I 624 , was not accepted in *Kowal v. New York Rabrond Co.* (1934) S.C. 21, on the ground that in the earlier case, the attention of the Court was not drawn to the later decision of Lord Alverstone in *Bizson v. Altricham Urban District Council* (1903) 1 K.B. 547.

25. While that is the position in the Court of Appeal, Australia, Canada and Malaysia, the position in India as to the meaning of "final order" appears to be in favour of Lord Esher's view. The Federal Court and the Supreme Court have followed *Salaman v. Warner* (1891) 1 Q.B. 734, while dealing with Section 109 of the Code of Civil Procedure, Section 205(1) of Government of Act, Articles 133 and 134 of the Constitution of India: see *Hori Ram Singh v. The Crown* AIR. 1939 F.C. 43 , AIR 1949 1 (Federal Court) , *Mohd. Amin Sultan Ltd. v. Dominion of India* AIR 1950 F.C. 71 , *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, ; *Javed Niaz Beg and Another Vs. Union of India and Another*, , *Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd.*, . In the last case, the suit was "decreed ex-parte and the Defendants application to set aside the decree was rejected by the Court, but the High Court allowed the appeal and restored the suit. It was held that the suit was very much alive, and it would not be treated as a final order. But, in our view, this decision in *Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd.*, , runs counter to the view in *Amrit Lal Chum Vs. Devoprasad Dutta Roy*, , where the majority, after a review of the entire case law, observed that if the order of the Court was one disposing of the matter finally so far a that Court was concerned- though that may leave the main matter pending in a subordinate Court, tribunal or authority-it would have to be treated as a final order so far as that Court was concerned-it may also have to be noted that Article 132 of the Constitution of India contains an Explanation and for the purpose of that Article, it appears, therefore, that the test laid down by Lord

Alverstone is appropriate.

26. The Supreme Court in *V.C. Shukla Vs. State through C.B.I.*, reviewed the case law again. As seen earlier, they were dealing with Section 11(1) of the Special Courts Act which granted an appeal against orders other than "interlocutory orders". Though the provision was similar to Section 397(2) Code of Criminal Procedure, the Supreme Court held that, so far as Section 11(1) is concerned, appeals are avowed against "orders" only if they are "final orders" within the principle laid down by Lord Esher. They confined the meaning "intermediate order" given to a similar provision u/s 397(2) Code of Criminal Procedure in *Madhu Limaye Vs. The State of Maharashtra*, to the cases under Code of Criminal Procedure, but did not expand that rule to the Special Courts Act. This they did because of the scheme and purpose of the Special Courts Act which was different from the Code of Criminal Procedure

(D) Judgment (other than Article 226 matters).- The word "judgment" is generally used to refer to the reasoning part of a decision which is final and which disposes of the case. For the purpose of Section 109 of the CPC and Articles 133 and 134 of the Constitution of India, the word "judgment" was understood in the sense of being final as a "decree": *Mohd. Amin Brothers Ltd. v. Dominion of India* AIR 1050 F.C. 77.

27. But, under Clause 15 of the Letters Patent (Madras) and the corresponding clause in the Letters Patent of other High Courts, the word "judgment" has been given a wider meaning. It Will be sufficient to refer to the latest decision of the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, The Supreme Court was there dealing with an "order" of a Single Judge of the Bombay High Court in the original civil jurisdiction rejecting to appoint a receiver and grant an injunction while holding that the "order" amounted to a "judgment" appeal able to a Division Bench, their Lordships adopted the wider Madras view of White, C.J. in *Tuljaram Rao v. Alagappa Chettiar* ILR 35 Mad. 1, with certain modifications. The Court referred to *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, wherein an "order" dismissing an application for review was held to be a judgment; to *Shri Radhey Shyam Vs. Shyam Behari Singh*, wherein an order" allowing an application to set aside a sale under Order 21, Rule 90 Code of Civil Peocedure was held to be a "judgment", to *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, wherein an order allowing an amendment of plaint was treated as a "judgment". The Court dealt with the words (i) "final judgment"; (ii) preliminary judgment"; and (ii) "intermediary or interlocutory judgment". Under the third category several orders which did not dispose of the case finally or fully would, their Lordships said, le judgments, and clarified (see para 115):

Thus, in other words, every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments Which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

In paragraph 119, the law was summarised and as per paragraph (2) of the summary, "interlocutory orders" which have the traits or trappings of finality even when they relate to "ancillary proceedings" or "part of the suit" would be "judgments". In paragraph 120, various types of orders which would be "judgments" for purpose of Clause 15 of Letters Patent were enumerated and these included "an order staying or to stay" a suit u/s 10 CPC (at 13); and "an order granting or refusing to stay" execution of the decree. The "case itself related to an order refusing to appoint a receiver and grant an injunction, In para 114, it was pointed out, however, that procedural orders of a routine nature—namely, an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents after the due date, an order of costs for default of one of the parties or orders of discretion in procedural matters, were not "judgments" for purposes of Clause 15 of the Letters Patent. It looks to us that the view adopted was similar to the view adopted while construing, "order" in *Central Bank of India Vs. Shri Gokal Chand*, or while equating "Order" minus interlocutory order in *Bhagwan Vishwanath Phadnis and Others Vs. Bhasker Digamber Choudhary*, and *Madhu Limaye Vs. The State of Maharashtra*, to intermediate orders.

(E) judgment (Writ Jurisdiction)- There was some argument for the Respondents that decisions rendered in writ jurisdiction even when they dispose of the main cases finally "on merits could only be orders, This, it is argued, is because of the language of Article 226(1) of the Constitution of India which states that the High Courts could issue directions, orders or writs. In that *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, it was, no doubt, observed (in para 125) that their Lordships were not dealing with the position of decisions under Article 226 of the Constitution in the context of "judgment" under Clause 5 of Letters Patent. But, in our view, it is clear that the High Court, while acting under Article 226, issues not merely orders or directions but also writs. When a high prerogative writ is issued, it would not be reasonable or proper to treat it as equivalent to an "order" passed by ordinary civil Courts. In fact, while dealing with Article 133, the Supreme Court has held that the decision issuing a writ "is a judgment": *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, Again while dealing with Clause 12 of the Letters Patent (J. and K.) (corresponding to Clause 15 of the Letters Patent - Madras) the Supreme Court held in *Pushkar Nath Nehru and Others Vs. Administrator (now by Executive Officer), Municipality, Srinagar and Another*, that an order granting a writ of mandamus under Article 32(2A) of the Constitution of J and K (corresponding to Article 226) is a "judgment". Therefore, for purposes of Clause 15 of the Letters Patent (Madras), a decision of the High Court issuing a writ has to be treated as a "judgment". Of course, as to the nature of the interlocutory orders pending the writ petition, several High Courts treat them as "judgments" under Clause 15 while a few have taken the contrary view. We have, however, to decide that question in the context of Section 5(1).

III. Section 5(i) of the Kerala High Court Act:

28. It is in the light of the above, that the meaning of the words "judgment or order" in Section 5(i) of the Act has to be ascertained. Counsel on both sides have cited a large number of rulings laying down various principles of construction or interpretation of statutes. Several primary and subsidiary principles of construction have been relied upon by both sides. It may not be possible to refer to all the rulings, but we shall refer only to a few important decisions.

29. At the outset, the broad contention for the Appellants that the word "order" in Section 5(i) is to be construed literally as "any" interlocutory order as in Article 136 of the Constitution of India has to be rejected. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, it has, no doubt, been held that order" in Article 136 is distinct from "final order" in Article 133 and includes "interlocutory orders" also. But it must be noted that the Supreme Court has very wide plenary powers under Article 136 even to vacate an ad interim order meant to be in force pending the Miscellaneous Petition. In our view, the word "order" u/s 5(i) cannot be equated to any order, as wide as the one in Article 136. If such a wide construction is to be adopted, it might, as contended for the Respondents, lead to several absurd or incongruous results. An "order" obviously cannot include mere procedural orders of adjournment, admission of writ, summoning of documents or witnesses, or directing local inspection, etc., which orders do not seriously affect the rights of the parties. Therefore, as contended for the Respondents, the "literal construction" test fails for, the Legislature, in our view, never used the word "order" in such an extremely wide sense. The question then is whether it is used, at the other extreme, in as restrictive a manner as being equivalent to a "final order (whether it be in the dual sense of Lord Esher or in the unitary sense of Lord Alverstone) as contended for the Respondents or was meant to be understood in a less restrictive manner as contended for the Appellants, namely, as an "intermediate order" as explained in *Amar Nath and Others Vs. State of Haryana and Another*, , and *Madhu Limaye Vs. The State of Maharashtra*, .

30. The provisions of the statute, in our view, have no doubt to be construed by examining every word of a statute in its context as contended for the Respondents. But the question is what is meant by the word "context". In *Attorney General v. Prince Ernest August of Hanover* 1957 A.C. 436, Viscount Simonds stated:

...words, and particularly general words, cannot be read in isolation; their colour and context are derived from their context. I conceive it to be my right and duty to examine every word of a statute in its context and I use "content in its widest sense, which I have already indicated as including not only other enact! provisions of the same statute but (also) its preamble, the existing state of the law, other statutes in pari materia and the mischief, which I can, by those and other legitimate means, discern the statute was intended to remedy.

(emphasis supplied)

The above passage was followed with approval by Chinnappa Reddy, J. in *Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others*, . The learned Judge then referred to the state of Objects and Reasons, the scheme of the Act, all the provisions of the Act, etc., to construe the relevant statutory provisions. Thus the word "context", must, in our opinion, be understood in the widest sense.

31. We have already referred to the existing state of law when the Kerala High Court Act, 1958 was enacted. We have pointed out that the provisions of the Letters Patent (including Clause 15) were in force in the territories transferred to the State Of Kerala from the State of Madras and that by virtue of Section 52 of the States Re-organisation Act, 1956, the new High Court of Kerala was entitled to exercise powers under Clause 15 of the Letters Patent (Madras) so far as the Malabar area is concerned which included appeals against interlocutory order. Again, so far as the Travancore-Cochin area is concerned, appeals lay u/s 21(i) of the Travancore-Cochin High Court Act, 1925 against orders passed by a Single Judge u/s 20(4)(A)(x) made in exercise of powers under Article 226(1) of the Constitution of India and it was not decided by the Travancore-Cochin High Court, one way or the other, whether an appeal did or did not lie against interlocutory orders affecting valuable rights of parties, pending a Writ Petition. In the Statement of Objects and Reasons and in the proceedings of the Legislative Assembly, the existing position, namely, the applicability of the Letters Patent (Madras) in the Malabar area was clearly noticed. Further, the preponderant views of the Judges in the "various High Courts" and the Letters Patent (Madras) and the general practice in various High Court was taken into consideration by the Kerala Legislature. The Allahabad, Madras, Calcutta and Mysore High Courts were consulted (The first three High Courts had Letters Patent). The object of the Kerala Act was to "unify the jurisdiction" in the Malabar area and in the Travancore-Cochin area, while the resolutions of the High Court on the Administrative side show that the Court proposed that there must be a provision for appeals against "decisions" of a Single. Judge in regard to matters under Article 226 of the Constitution or a specific section to provide for such appeals. The State of Objects and Reasons and proceedings of the Legislature laid emphasis on the Letters Patent power in Malabar area and consultations with the Allahabad, Madras and Calcutta High Courts. The Statement of Objects and Reasons in a Bill and the debates can be looked into for the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation and the steps intended to remedy any existing malady (*Shashikant Laxman Kale v. Union of India* A.I.R 1990 S.C. 2114 . According to the "recent trend", proceedings in the Legislature can be looked into for explaining the reasons for a Bill and can be referred to for the purposes of ascertaining .the mischief sought to be remedied by the legislation and. the object and purpose for which the legislation is enacted *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, . Further, as stated in *Crawford* on

the Construction of Statutes (1940) (para 336), in the context of right of appeals against "interlocutory orders:

...statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable. In a few States, however, where the statute pertains to appeals from interlocutory orders, the rule of strict construction has been applied. But, there seems to be, no real justification for this departure from the general rule in accord with which a liberal construction would be given by the Court.

(emphasis supplied)

In Sutherland's Statutory Construction (3rd Edn, Vol 3, pars 6807) it is said in relation to "statutes allowing appeals":

Statutes giving the right of appeal are liberally construed in furtherance of justice, and an interpretation which will work a forfeiture of that right is not favoured. Thus provisions limiting the time for bringing an appeal are liberally interpreted so that the party pursuing the remedy of appeal will not be defeated on mere technicalities. Likewise, an interpretation "using the canon from which an appeal may be brought or the persons who may bring an appeal is not preferred.

(emphasis supplied)

In *Indo Mercantile Bank Ltd. v. Commissioner* 1980 KLT 1091, a Full Bench of this Court, while dealing with the question whether the right of appeal to a Division Bench against the decision of the Single Judge finally disposing of a Writ Petition was taken away under the Kerala High Courts Act, 1058 observed that a construction which leads to the taking away of an existing right of appeal cannot be favoured and that the provision relating to appeal has to be liberally construed. This, principle certainly applies to the Malabar area of/the State, which had Letters Patent even after 1st November 1956.

32. Coming then to the other "context", namely, the other provisions of the Act taken as a whole and the particular provisions, - let us examine (Section 5 of the Act as a whole and not Section 5(i) in isolation. (While on this aspect, we do not propose to disturb the "conclusions" of the Division Bench of this Court in *Damodaran v. Sankaran* 1985 KLT 153, in regard to Section 5(ii) of the Act dealing with appeals against judgments of a Single Judge in appeals in the first appellate civil jurisdiction for that question does not arise in the matters before us).

33. u/s 3 appeals are provided to a Single Judge of the High Court from "judgment or Order" of any criminal Court Section 3(7); from a "judgment or Order" of a criminal Court, except in cases in which the Appellant or a person tried with him has been sentenced to death or imprisonment for life Section 3(13) (a). These appeals are regulated by the Code of Criminal Procedure or other special statutes. Revisions on the criminal side are governed, apart from other

provisions, also by Section 397(2) Code of Criminal Procedure, as interpreted by the Supreme" Court in Madhu Limaye Vs. The State of Maharashtra, Appeals are also provided from an original "decree or order", in any suit or other proceedings upto a value Section 3(13)(b); from an original decree when such appeal relates to costs only Section 13(3)(c) and from "orders". u/s 104 CPC except those mentioned in Section 104(1)(h), Order 43 Rule 1 Clause (c), (d) or (f). u/s 4(2), an appeal lies to a Division Bench against "decree or order" of a civil Court, except those u/s 3. Section 4(6) further provides an appeal to a Division Bench from "any judgment, order or decree" passed by a Single Judge.

34. Coming to Section 5, in Section 5(ii) and Section 5(iii) appeals are provided against "decrees" and then against "orders" which are not decrees. In our view, these two sub-clauses use the word "decree" for describing the final adjudication of the case in the Original Civil Jurisdiction, be it of the District Munsiff's Court or of the Subordinate Judge's Court. When we come to Section 5(i), the word "judgment" is used to describe the final decision on merits disposing of the main proceeding such" as the one in a Writ Petition, Company matter or matters under Indian Divorce Act, Indian Succession Act, 1925, Travancore-Cochin Hindu Endowments Act, Merchant Shipping Act, etc. The word "judgment" has been used in Section 5(1) because the word "decree" is not appropriate for describing the above said final decisions on merits. So far as the word "order" is concerned, just as it refers also to orders not disposing of the suit, the word "order" in Section 5(i) also refers to decisions, pending the Writ Petition, which do not dispose of the entire Writ Petition. The word "order" takes colour front the word "order" used in Section 5(ii) and 5(iii), The word "order" in Section 5(i) does not however, mean any order Whatsoever passed pending the Writ Petition, but only such "orders" which affect or touch upon the substantial rights and liabilities of the parties pending the Writ Petition and is not restricted necessarily to "final orders". The word "order", in our view, is used in the sense of "intermediate orders", referred to in Madhu Limaye Vs. The State of Maharashtra, ,

35. It has been argued for the Respondents that the proper rule of construction applicable is the one known as Noscitur a Society. That means that "a word is to be judged" by the company it keeps". It is contended that the word order" is a general or wide word and as it is following the word. "judgment", it takes its colour from the word "judgment" and refers to "final orders" disposing of the Writ Petition, the word "judgment", being confined to Original Jurisdiction other than Writ Jurisdictions. In our view, with great respect, this contention which found favour in State of Kerala v. Sudarsan Babu 1983 KLT 764 F.B. and in State of Kerala v. Krishnankutty 1985 K.L 201 F.B. cannot be accepted. In the said decisions, the Court has not given sufficient importance, to the entire context inclusive of the pre-existing state of law in the Malabar area to which the Letters Patent applied and to the fact that the Legislature wanted to unify the powers and jurisdiction in the Malabar and Travancore-Cochin areas. The Court did not notice that the word "order" in Sections 5(ii) and 5(ii) is used to refer to "orders" which are passed pending the suits and which seriously affect the rights and

liabilities of the parties pending suit and that the word "order" is used in Section 5(i) in a similar sense. As pointed out earlier, in *Attorney General v. Prince Earnest August of Hanover* (1957) A.C. 436, the principle of construction, namely, that the "context" is to be looked into is not necessarily restricted to the particular clause like Section 5(i). The existing state of law, the mischief sought to be remedied, the entire provisions and scheme of the Act have also be considered.

36. In *Damodaran v. Sankaran* 1985 KLT 153, there are certain obiter observations with reference to Section 5(i). It is stated that the Kerala High Court has no Original Jurisdiction attracting the provisions of the CPC though in respect of Matrimonial, Probate, Company and other matters, some Original Jurisdiction is still there, and in respect of them, the procedure in the Code may have to be followed by reason of Section 141. It was further stated that the "Explanation" to the section, however, now excludes proceedings under Article 226 from its purview and that u/s 21(i) of the T.C. Act, the word "order" could have meant only orders disposing of Original Petitions, as distinct from interlocutory orders, because the power conferred under Article 226(1) is to issue directions, orders or writs. It was further said that the word "order" in Section 21(i) of the T. C. Act had to be understood in the same sense as used in Article 226(1) and that if "judgment" in Section 5(i) is to be equated to "judgment" in Article 133(1), then "order" in Section 5(i) has to be equated to "final order" in Article 133(1), that Clauses (1) and (3) of Article 226 bring about the distinction between final and interim orders, that "final order" in Article 133 is more restricted than "final order" in Article 132 (in view of the Explanation to the latter), and that, therefore, the word "order" in Section 5(i) has to be construed as an order disposing of the writ itself and not merely an interlocutory application.

37. In our view, the above observations are obiter so far as Section 5(i) is concerned and further cannot, with great respect, be accepted as giving the proper meaning to the words "judgment" or "order" in Section 5(i). Decisions of the High Court disposing of the main Writ Petitions finally, whether by way of issuing writs, directions or order cannot be treated as "orders". Such final disposal of the Writ Petitions on merits, in our view, amount, as already stated, to a judgment. We do not also find any reason as to why the final decision on merits to matters falling in the Original Jurisdiction of the High Court including writ jurisdiction should be treated as "orders", otherwise, the word "judgment" in Section 5(i) will be rendered practically otiose.

38. The learned Counsel for the Respondent, Sri Rama Kumar, at one stage, argued that the final disposal on merits in respect of matters other than writs would be "judgments" for purposes of Section 5(i) but not the final decision disposing of the Writ Petitions on merits. We fail to see on what ground such a deviation can be made. Merely because the T.C. Act referred to decisions in Writ Jurisdiction as "orders" or merely because Article 226(1) uses the word "writ,

direction or order", all such disposal on merits cannot be equated with "orders". In fact, such an interpretation would run counter to the scheme of Section 5(ii) and Section 5(iii) wherein the words "decree" or "order" are used. The former referred to final disposal on merits and the latter to orders in interlocutory applications not necessarily disposing of the suit or proceeding.

39. An alternative contention for the Appellants was raised that the word "judgment" in Section 5(i) is used in the same sense as "judgment" in Clause 15, as explained in *Shah Babulal Khimji's case* AIR 1981 S.C. 1788, that embracing final judgment on merits as also other orders in Miscellaneous Petitions seriously affecting the rights of parties. This contention, in our view, if accepted, would render the word "order" otiose.

40. The same problem arose in *Muzack Corporation v. Composers, etc.* 1953 (2) S.C.R. 182, before the Supreme Court of Canada. An appeal, lay u/s 82(1) of the Exchequer Act to the Supreme Court:

(a) from a "final judgment" or a judgment upon a demurrer or point of law raised by the pleadings, and

(b) with leave of a Judge of the Supreme Court of Canada, from an interlocutory judgment.

(emphasis supplied)

An appeal was preferred upon such, leave u/s 82(1)(b) against an order of the President of the Exchequer Court granting permission to the Respondents to serve notice on the Appellant outside the jurisdiction of Court for copyright infringement. All the Judges of the Supreme Court of Canada were agreed that the order was an "interlocutory judgment" falling u/s 82(1)(b) and such orders cannot be treated as "interlocutory orders" not coming under either clause. Cartwright, J, accepted that the decision was an "order" rather than a judgment, but such orders amount to "interlocutory judgment" u/s 82 (1)(b). Though the word "judgment" is used in a general sense included all judicial decisions as stated in Blackstone's Commentaries (1768) (Vol. 3, p. 396), still there was a difference between "judgment" and "order" as held by Cotton L.J. in *Ex-parte Chinery* (1884) 12 Q.B.D. 342, and by Lord Esher in *Onalow v. Commissioners of Inland Revenue* (1890) 25 Q.B.D. 465. In the latter case, it was observed:

A "judgment", therefore, is a decision obtained in an action and every other decision is an order.

Following the observations in these two cases and holding that the order was an "interlocutory judgment" u/s 82(1)(b), Cartwright, J. pointed out that if "judgment" in both Clauses (a) and (b) of Section 82 dealt with judgment in the strict sense as meant by Cotton, L.J. in the earlier case, i.e., as a "judgment obtained in an action by which a previous existing liability of the Defendant to the Plaintiff is ascertained or established", then

there would be nothing upon which Clause (b) of Sub-section (I) of Section 82 could operate. A construction which would leave the clause without any effect must be avoided if possible, and, in this case, it can be avoided if giving, the word "judgment" in Section 82(1)(b) a sense in which it is often used and interpreting it as including orders.

41. Thus, we are not inclined to accept the contention for the Respondents based on the reasoning in *Damodaran v. Sankaran* 1985 KLT 153, which will render the word "judgment" notice nor the other alternative contentions for the Appellants, which will render the word "order" otiose. The interpretation which we have adopted gives ample meaning to the word "judgment" as well as to the word "order".

42. It has, however, been argued for the Respondents that the word "order" in Section 5(i) of the Kerala Act is to be interpreted as a "final order as in *V.C. Shukla v. State* AIR 1980 S.C. 982 , but not as an "intermediate order" as in *Madhu Limaye Vs. The State of Maharashtra*, It is said that otherwise, the Division Bench would be flooded with appeals against interlocutory orders passed in pending Writ Petitions. It is also stated that it is not as if there is no remedy for the affected, party and the remedy, it is said, is in moving the Supreme Court under Article 136 of the Constitution of India.

43. It must, in our view, be noted that in *V.C. Shukla Vs. State* through C.B.I., the Supreme Court did not, while dealing with the provision in Section 11(1) of the Special Courts Act, almost similar to Section 397 Code of Criminal Procedure disapprove the decision in *Madhu Limaye Vs. The State of Maharashtra*, , On the other hand, the said decision was specifically approved pointing out that for the wide purpose of a revision in myriad types of criminal matters arising day-in and day-out in the Courts, the legislature intended to give a meaningful and purposeful right of revision, whereas the cases under the Special Courts Act would, be few and far between, the legislature would not have Intended appeals against any orders unless they were of the restricted nature of "anal order" as viewed by Lord Esher. Fazi Ali, J. observed in *V.C. Shukla's* case A.I.R 1980 S.C 982 (paragraphs 5, 6 and 7) that the Special Courts Act eliminated the committal procedure to cut down delays, that Section 11(1) started with a non-obstante. clause- ?notwith standing anything in the Code of Criminal Procedure? and the Act applied to a small number of serious and special types of offences as opposed to the large number arising under other law to which the Code of Criminal Procedure applies. It is, there Lore, clear that almost similar words in two statutes were differently interpreted, having regard to the legislative purpose of the respective statutes. In our view, the jurisdiction of the High Court under Article 226 of the Constitution of India is meant to be very wide, not only touching fundamental rights, but all statutes, statutory orders and administrative orders against "State" as understood. In Article 12 and other public authorities. Orders could be issued against several quasi-judicial Tribunals too. In recent times, the width of Article 226 has been expanded further. The scope of Article

226 is far wider than Section 397(2) of the Code of Criminal Procedure. Not only matters important for individuals, but to the public at large and to the State, including those dealing, with validity of laws made by legislature and including certain orders of the Speaker of a Legislature are now held amenable to writ jurisdiction. The matters regarding public servants too arise day by day. In that context, the word "order" cannot be given the restrictive meaning of "final order" as given in Section 11(1) of the Special Courts Act "which had a very small area of action. In fact, in *Madhu Limaye Vs. The State of Maharashtra, Untwalia, J.* while giving a wider meaning to the word "order" (other than interlocutory order) and restricting the meaning of interlocutory order, proceeded upon the purpose of the Code of Criminal Procedure and the need for a wide provision to embrace all "Intermediate order" in our view, the purpose in the word "order" along with "judgment" in Section 5(i) is to cover a similar situation providing appeals "against intermediate orders".

44. Again while, no, doubt, the Supreme Court referred to avoiding of flood of internal appeals and to Article 136, as an effective remedy to cover orders not amenable to appeal u/s 11(1) of the Special Courts Act, the Supreme Court while dealing with Clause 15 of the Letters Patent *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, the Supreme Court significantly observed that:

a Court is not justified in interpreting a legal term...so as to deny appeals even against urgent orders to litigant having genuine grievances so as to make the scapegoats in the guise of protecting vexatious appeals, in such cases, a just balance must be struck so as to advance the object of the statute and give the desired relief to the litigants, if possible.

(emphasis supplied)

Further, it will be reasonable to correct those interlocutory orders of moment within the Court rather, than burden the Supreme Court of India with appeals under Article 136 of the Constitution of India against such orders.

45. It was argued for the Respondents that Section 4(6) has considerable bearing on the question, that that subsection, uses the word "original judgment" or decree", while providing appeals to a Division Bench. In our view, Section 4(6) cannot be read narrowly, but has to be read in conjunction with Section 5. In fact, while Section 3 deals with the "power" of a Single Judge, Section 4 deals with powers of a Bench of two Judges"-in the sense of the dichotomy of powers of Single Judges and Division Benches, while Section 4(6) deals with the right of appeal from judgment or order of Single Judge. Here we are concerned with right of appeals from a Single Judge's "judgment. or order"; we have first to go to Section 5. If the appeal lies u/s 5, then Section 4(6) says that such an appeal under, say, Section 5(1), from a "judgment" or "order" would be "to a Division Bench. The Scope of the very right of appeal cannot be judged solely from Section 4(6), for it is Section 5 that gives the right and if there is any ambiguity, Section 5 will necessarily have to prevail over Section 4(6). Further, when the

legislature is fully conscious of the use of the words "judgment; decree or final order", in Section 100 Code of Civil Procedure, Article 133 of the Constitution, can it be said that the legislature used the word "order" rather than the word "final order" so that Section 4(6) may not run consistent with Section 5, with which it is closely linked up. We are, therefore, not inclined to read the word "order" in Section 5(i) by adding" the word "final" before it as contended for the Respondents.

46. We are of the view that the order appealed against in *State of Kerala v. Thankamma and Ors.* 1968 KLT 390 F.B., u/s 5(i) was a "preliminary judgment" dealing with the wires of the relevant provisions and the decision of the Full Bench was correct on facts. The observations of the Division Bench in *P. K. Kunju v. State of Kerala* 1970 K.L.T 644, against orders as going to the "root" are rather too wide. So far as the decision in *Mohammed Haji v. Ayamma* 1976 K.L.T 326 F.B., is concerned, it related to Section 5(iii) and has no relevance. The decision of the Full Bench in *State of Kerala v. Sudarsan Babu* 1983 K.L.T 64 (F.B.) dealt with an appeal refusing; to review an order directing issue of notice to the Speaker of the Legislative Assembly and the ultimate conclusion that the order is not appealable is, in our view, correct, but, with great respect, we do not agree that the word "order" in Section 5(i) takes its colour from the word "judgment" in Section 5(i). We also do not agree, with great respect, with the view in *State of Kerala v. Krishnankutty* 1985 K.L.T 201, holding that "order" in Section 5(i) is in the nature of a "final order. We also do not agree with the obiter observations in *Damodamn v. Sankaran* (46), in so far as they related to Section 5(i), and we are not concerned with the conclusions therein relating to Section 5(ii).

Conclusion.-(1) The word "order" in Section 5(i) of the Kerala High Court Act, 1958 includes, apart from other orders, orders passed by the High Court in Miscellaneous "appeal rotted in the Writ Petitions provided the orders are to be in force pending the Writ Petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the "order" appeal- able belongs to the category of "intermediate orders" referred to by the Supreme Court in *Madhu Limaye Vs. The State of Maharashtra*, . The word "order" is not confined to "final order" which disposes of the Writ Petition. The "orders" should not, however, be ad interim orders in force pending the Miscellaneous Petition or orders merely of a procedural nature.

(2) But this does not mean that the Division Bench hearing the appeal against such "orders" will have to admit the appeal or have to modify the impugned order or set it aside the same in every case. There is difference between the question whether an appeal lies to a Division Bench and as to the scope of interference. Normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to law, or are perverse, and

they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate compensation. The idea is to provide an internal remedy in such cases without compelling the parties to go all the way to the Supreme Court under Article 136 of the Constitution of India or increase the burden of that Court unnecessarily.

(3) It will, however, be incumbent upon the Appellant to serve the counsel who has appeared before the Single Judge for the opposite party (unless of course the counsel's authority has been revoked or he is dead) and when such Appeals against orders come up in appeal for admission before the Division Bench, it will be open to the Bench to treat such service as mentioned above as sufficient service on the parties (unless the Court, in the circumstances of the case, thinks, otherwise), and to dispose of the appeal either at the stage of admission or soon thereafter, after considering the facts of the case or subsequent events. This would generally obviate admission of the Writ Appeals, issue of notice and the passing of interim orders pending Writ Appeals.

47. We, therefore, direct that the appeal in these two cases, being appeals against orders which are to be in force for the period during the pendency of the Writ Petitions, are maintainable and may be registered and posted for admission. The reference is disposed of accordingly.

K.S. Paripooran, J.

48. With great respect to My Lord the Chief Justice and my brother Judges, I am of the view that an interlocutory order passed by a learned Single Judge in an Original Petition, while the main Original Petition is still pending is not appealable u/s 5(i) of the Kerala High Court Act. In the judgment delivered by My Lord the Chief Justice, the facts of the case have been set out in detail. It is unnecessary to restate them. In both the Original Petitions (O.P. Nos. 9800/91 and 7132 of 1991) interlocutory orders have been passed on stay petitions. It is the said orders passed on the stay petitions that are sought to be appealed against in the writ appeals.

49. Section 5 of the Kerala High Court Act, 1958 is to the following effect:

5. Appeals from judgment or order of Single Judge.-An appeal shall lie to a Bench of two Judges from:

(i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or

(ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate Court; or

(iii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate Court, if the Judge who passed such judgment certifies that the case

is a fit one for appeal.

50. The short question that arises for consideration is whether the Writ Appeals filed from the interlocutory orders passed in the two Original Petitions are maintainable u/s 5(i) of the Kerala High Court Act (hereinafter referred to as the Act). Mr. P.C. Chacko and Mr. K. Narayana Kurup, counsel for the Appellants, contend that the appeals are maintainable. On the other hand, the learned Advocate General Mr. M.B. Kurup and Mr. K. Ramkumar, counsel for the Respondents, contend that the appeals are not maintainable. Mr. M. Damodaran, counsel for the Respondents in one of the cases, as also Mr. Mathews P. Mathew, President of the Bar Association, would contend that appeals would lie u/s 5(i) of the Act from an interlocutory order passed in an Original Petition in certain or specified cases. So, we are solely concerned as to whether, an appeal will lie from an interlocutory order passed by a learned Single Judge of this Court in proceedings" under Article 226 of the Constitution, u/s 5(i) of the Act.

51. A Full Bench of this Court in *State of Kerala v. Sudarsan Babu* 1983 K.L.T 764 and two Division Benches in *Damodaran v. Sankaran* 1985 K.L.T 153 and *State of Kerala v. Krishnakutty* 1985 KLT 291 have taken the view that an appeal will, not lie u/s 5(i) of the Act from an interlocutory order, passed by a learned Single Judge in proceedings under Article 226 of the Constitution of India. The said decisions would apply in these cases as well. Counsel for the Appellants would contend that the said decisions do not lay down the law correctly and it is in that perspective the arguments covered a wide field to substantiate the proposition that an appeal will lie u/s 5(i) of the Act, from "any order" passed by a learned Single Judge in proceedings under Article 226 of the Constitution, even though the main Original Petition is pending and is not finally disposed of.

52. Section 5(i) of the Act came up for consideration before a Full Bench of this Court in *State of Kerala v. Sudarsan Babu* 1983 K.L.T 764. Delivering the judgment of the Full Bench, Subramanian Poti, C.J., explained the scope of Section 5(i) of the Act thus, at page 769:

While Sub-sections (ii) and (iii) deal with a judgment of a Single judge in the exercise of First Appellate and Second Appellate jurisdiction respectively, Sub-section (i) deals with a case of an appeal, from a judgment or order of a Single Judge made in original jurisdiction. The proceedings under Article 228 are proceedings in original jurisdiction. Thus an appeal will lie against every judgment or order of the Single Judge in such proceedings to a Division Bench. It is to be understood as enabling a party to file an appeal against any order interlocutory or otherwise even an order granting an adjournment will be appealable to a Bench of two Judges. That is not, according to us, the scope of Section 5(i). The term "order" is found in association with the term "judgment" and therefore necessarily it takes its colour from such association. Section 5(i) applies not only to writ proceedings, but to all proceedings of original jurisdiction. In the exercise of original jurisdiction the learned Judge may dispose of a proceeding by a judgment in certain cases and by an order in other cases. In

either of much cases since the disposal is an adjudication there is finality attached to it and the judgment or order operates to decide the issue between the parties.

Again in paragraph 13 of the judgment (at page 770) the learned Chief Justice stated the law pithily thus:

The term "order" in Section 5(i) must have the character of an adjudication which is final and binding on the parties.

In *Damodaran v. Sankaran* 1985 KLT 153, an appeal was filed from an order passed by a learned Single Judge declining to impale the legal representatives of the Appellants and to set aside the abatement in First Appeal. The appeal filed from the said order was sought to be sustained u/s 5(ii) of the Act. The Bench considered the scope of Section 5 as a whole in its historical background and also the earlier law. The Full Bench decision in *Sudarsan Babu's* case 1983 KLT 764, and the scope of Section 5(i) of the Act as laid down therein was quoted in paragraph 25 of the judgment. M.P. Menon, J., speaking for the Bench, posed the question thus : "What then is the scope of the term "order" in Section 5(i), in the context of proceedings under Article 226 ?" and proceeded to state thus:

Under Section 20(4)(A)(x) of the T.C. High Court Act a Single Judge had power to deal with matters arising under the Article and Section 21(i) of the Act conferred powers on a Bench of two Judges.

to hear and decide appeals against orders passed by a Single Judge under Sub-clause (A)(x) of Clause (4) of Section 20."

The word "orders" in Section 21(i) could only have meant orders disposing of the Original Petitions, as distinct from interlocutory orders, because the power conferred under Article 226(1) was to issue directions, orders or writs". That is, the word "order" In Section 21(1) of the T.C. High Court Act had to be understood in the same sense in which it was used in Article 226(1). In view of the Full Bench decision in *Mohammed Haji's* case 1976 KLT 326 also, where "judgment" in Section 5(i) of the Kerala High Court Act has been equated to "judgment" within the meaning of Article 133(1) of the Constitution, it will be proper to equate "order" in Section 5(i) to "final order" in Article 133(1). Clauses (1) and (3) of Article 226 bring out the distinction between final and interim orders. The Explanation to Article 132 suggest that "final order" in Clause (1) of the Article is used in a wider sense than in Clause (1) of Article 133; conversely, the expression has a more restricted meaning in Article 133(1). In view of these considerations it would be Reasonable to hold that in relation to proceedings under Article 226 at least, the word "order" in Section 5(i) of the Kerala High Court Act has to be construed as an order effectively disposing of the cause itself, and not a mere interlocutory order. The observations of the Supreme Court in *Babulal* specifically excluding proceeding under the Article from its broad sweep is also relevant in this context.

Still later, the scope of Section 5(i) of the Act came up for consideration before a Bench in *State of Kerala v. Krishnan Kutty* 1985 KLT 201. (I was a party to the said decision). In the said case, a Writ Appeal was filed from the order passed by a learned Single Judge in an interlocutory petition in a pending Original Petition. Objection was taken that the "writ appeal filed against an interlocutory order is not maintainable. The State (Appellant therein) sought to sustain the appeal u/s 5(i) of the Act. Repelling the contention of the State, it was held that the appeal is not maintainable. The decision of the Supreme Court in *Bank of India Ltd. v. Gokal Chand* AIR 1987 S.C 799, *State of Kerala v. Sudarsan Babu* 1983 KLT 764, (F.B.), *P. K. Kunju v. State of Kerala* 1970 KLT 644, *Mohammed Haji v. Ayajma* 1976 KLT 328 (F.B.), *Mohammed Amin Brothers Ltd. v. The Dominion of India* AIR 1950 F.C. 77, *Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another*, *Prakas Chand Agarwal v. Mis Hindustan Steel Ltd.* AIR 1971. S.C. 2819 and also the decision in *A. S. No. 17 of 1978* 1935 KLT 153 were referred to in coming to the following conclusion:

Considered in the light of the above decisions, however wide the expression, "judgment or order", occurring in Section 5(i) of the Kerala High Court Act, 1958, may be, we are of opinion that an appeal from the judgment or order of a Single Judge will lie to a Bench of two Judges, only if the judgment or order is "final", "procedural orders and interlocutory orders" will not be within the sweep of Section 5(i) of the Act. The order under appeal does not finally dispose of the matter, It is not a final order at all.

53. The Appellants contend that the above decisions have not considered in a proper perspective the meaning to be given to the word "order" occurring in Section 5(i) of the Act. It is stated that the word "order" is used in a wide sense; there are no words of limitation; the section should be interpreted literally. On the other hand, counsel for the opposing Respondents contend that the literal interpretation will lead to absurdity; that the word "order" occurring in Section 5(i) of the Act should be understood in the context and setting in which it occurs; that the meaning ascribed to the word "order" in other statutes and in a different context should not be imported in construing Section 5(i) of the Act; the word "order" should be understood in the light of the word "judgment" that occurs in section (i) of the Act and so construed the word "order" in Section 5(i) will take in only a final order or an order which adjudicates or disposes of the matter finally. The opposing Respondents also submitted that the principle of stare decisis should apply. This Court has consistently taken the view that "an appeal will not lie from an interlocutory order passed by a learned Single Judge and this longstanding settled" practice and law laid down by this Court should not be disturbed; there is no compelling reason as to why the decisions which held the field for a long time should be disturbed, even if another view is possible on the language of the statute.

54. Before evaluating the rival pleas urged before us, we should remember certain basic principles laid down by the Supreme Court. A particular state of law

prevailing in a State for a period of time, wherein the people of that area have adjusted themselves with that law in their daily life, should not be ordinarily upset except under compelling circumstances. See- Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others, . The plea for reconsideration of the earlier decisions can be entertained only if the Court is satisfied that there are compelling and substantial reasons therefore. In questions involving construction of statutory or constitutional provisions, two views are often reasonably possible; Even if an alternate view is possible, since the earlier decision held the held for a long time and had regulated the procedure and no decision had taken a contrary view, the reconsideration for upsetting the earlier view will not ordinarily be proper, unless there are compelling and substantial reasons therefore and it is in the interests of the public good. See-The Keshav Mills Co. Ltd. v. The Commissioner of income Tax AIR 1965 S.C. 1638, and Collector of Central Excise v. Mis Standard Motor Products AIR 1989 S.C. 1296 , This rule is based on expediency and public policy. See- Maktul Vs. Mst. Manbhari and Others, . The requirement of public interest should be considered in disturbing a question of law which held the field for a long time. See-India Electric Works v. James Mantosh A.I.R..1971 S.C 2813 at p. 2318. Cases on the construction of one statute are rarely of value in construing another statute, for each case turns on the language with which it is concerned" and the context and background in which the statute is enacted. See- The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta, Income Tax Officer and Another, and also Lilavati Bai Vs. The State of Bombay, at p 527 para 9. In the matter of a local statute, the view taken by the High Court over a number of years would normally be upheld and will not be disturbed even by the superior Court. See- Raj Narain Pandey and Others Vs. Sant Prasad Tewari and Others, and Darshan Singh Vs. Ram Pal Singh and another, para 33.

55. Bearing in mind the above principles, I am of the view that the word "order" occurring in Section 5(i) of the Act should be construed in the context in which it occurs and it should necessarily take its colour from the word "judgment"; it can refer only to a final adjudication. In other words, the order should effectively dispose of the cause itself (a final order) and not merely an interlocutory order and the fact that the word "order" or "judgment" can also be construed in a wide sense as it was done in other statutes or in Other context, cannot be a reason to import the said meaning in the context of Section 5(i) of the Act. At any rate, it cannot be said, that the above consistent view taken by this Court in the Full Bench decision, Division Bench decisions and in other unreported cases is perverse or patently wrong; public policy and public interest do not favour the disturbance of the above definite position in law which held the field for fairly a long time. It is in consonance with high public policy that unnecessary, frivolous arid avoidable litigation should be discouraged and there should be certainty finality and speed, by which the litigation is brought to a close. Law should be clear, and definite, so that persons concerned can adjust their rights. It should not be vague or uncertain. If so it will open the floodgates of litigation and

expose persons to unnecessary, vexatious and meaningless litigation. Modern thinking as reflected in legislations and by jurists, is to minimise the number of appellate forums or stages in litigation and to speed up the judicial process and bring down litigations. These aspects which reflect the public policy and "public interest will be defeated, if we interpret the word "order" in Section 5(i) of the Act, to include "any order or orders which substantially affect or touch upon substantial rights or liabilities of the parties etc., which term itself may call for interpretation from time to time and throw persons into an area of uncertainty and endless, futile litigation.

56. Broadly based on the above public policy and also in public interest, I see no reason to depart from the view taken by the Full Bench of this Court in *State of Kerala v. Sudarsan Babu* 1983 KLT 784 and two Division Benches in *Damodanm v. Sankaran* 1985 KLT 153 and *State of Kerala v. Krishnankutty* 1985 K.LT. 201. I hold that the writ appeals, in the instant cases, are not maintainable.

57. I have had the opportunity of reading the refined, conscientious, critical and minute analysis of all the relevant case law and the relevant statutory provisions which are contained in the judgment of my noble brother Chief Justice. I agree so fully with His Lordship's reasoning and conclusion that I will not run the risk of clouding its clarity by restating it in my own and less felicitous" words. All I intend to do is to mention some subsidiary considerations, which in my view, will only lend support to the conclusions of His Lordship Chief Justice.

58. Plainly speaking,. the core question that falls for consideration in the appeals is this:

With what intention the Kerala Legislature has used the words "a judgment and order" of Single Judge in Section 5(i) of the Kerala High Court Act, hereinafter referred to as the Act. Whether the "a judgment and order" in Section 5(i) of the Act will take only a final order or intermediate or all interlocutory orders passed on miscellaneous petitions filed in the original proceedings under Article 226 of the Constitution, while leaving the original proceedings undisposed of Section 5(i) needs repetition for exposing my views on the question raised in these appeals. I quote:

5 Appeal from judgment or order of Single Judge.-An appeal shall lie to a Bench of two Judges from-

(i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or

59. I do not want to repeat the facts of the appeals since all the relevant facts necessary for the question to be decided are neatly given in the judgment of His Lordship Chief Justice

60. Section 5(1) was the subject matter of deep consideration by this Court in certain "decisions. The general trend of those decisions, 1 have to admit is plain and clear to the effect that the words "a judgment or order of a Single Judge" in section 5(1) of the Act are not intended to give a right of appeal even on a final

interlocutory order pending the final disposal of the original proceedings. Certainly, there can be orders passed on interlocutory proceedings in original proceedings, which may finally dispose of the original proceedings itself. Perhaps, it may not be necessary in such circumstances to file an appeal against the order on the interlocutory application since an appeal on the final decision of the original proceedings can be resorted to. But the distinctive character of such orders was the subject of very useful debate in many important decisions of our Supreme Court, English Courts and Courts of America, Australia and Canada.

61. In order to understand the width and scope of the appellate provision in Section 5(i) it is necessary to delineate the relevant other provisions of the Kerala High Court Act, 1958. I feel that first I must refer to Section 4 of the Act, which reads thus:

4. Powers of a Bench of two Judges.-The powers of the High Court in relation to the following matters may be exercised by a Bench of two Judges, provided that if both Judges agree that the decision involves a question of law they may order that the matter or question of law be referred to a Full Bench:

(1) Any matter in respect of which the powers of the High Court can be exercised by a Single Judge,

(2) An appealed

(a) from a decree or order of a civil Court, except those coming u/s 3;

(b) from" the judgment of a criminal Court in which a sentence of death or imprisonment for life has been passed on the Appellant or on a person tried with him.

(3) A reference-

(a) u/s 113 of the Code of Civil Procedure,

(b) u/s 307, Section 374 or Section 432 of the Code of Criminal Procedure, 1898.

(4) An application under Rule 2 of Order XLV of the first Schedule to the Code of Civil Procedure, 1908.

(5) An application for the exercise of the powers conferred by Section 491 of the Code of Criminal Procedure, 1898 or by Clause (1) of Article 226 of the Constitution of India where such power relates to the issue of a writ of the nature of habeas corpus.

(6) An appeal from any original judgment, order or decree, passed by a Single Judge.

(7) All matters not expressly provided for in this Act or in any other law for the time being in force.

62. Now, I may refer to Section 3 of the Act, Which delineates the powers of a

Single Judge:

3. Powers of Single Judge.-The powers of the High Court in relation to the following matters may be exercised by a single Judge.

(1) * * *(2) * * * (3) Exercise of original jurisdiction under any law for the time being in force,

(4) * * * (5) * * * (8) * * * (7) * * * (8) * * * (9) * * * (10) Exercise of the power under-

(iii) clause (1) of Article 225 of the Constitution of India except where such power related to relates to the issue of a writ of the nature of habeas corpus.

(i) * * * (ii) * * *

63. Section 4 is a power source of the Division Bench but I am of opinion that it is not exclusive, singular or exhaustive Immediately, we are concerned only with Clause (6) of Section 4, i.e., the enumeration of the power given to the Division Bench to entertain an appeal from any original judgment, order or decree passed by a Single Judge. The appellate power granted u/s 4(6) economies specifies (1) appeal from original judgment; (2) appeal from order; or (3) appeal from decree passed by a Single Judge.

64. When we come to Section 5 of the Act, which deals with appeal from judgment or order of Single Judge; Section 5(i) dictates that an appeal shall lie to a Bench of Two Judges from-(i) a judgment or order of a Single Judge in the exercise of original jurisdiction. The wording. used in Section 4, dealing with the powers of bench of two judges is slightly different from the words used in Section 5(i) in so far as the qualifying word "any" and "original" are not seen as seen in Section 4(6) Of course, Section 5(ii) and (iii) provide for an appeal before a Division Bench from a judgment of a Single Judge- in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate Court and Section 5(iii) provides that an appeal from a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate Court, if the judge who passed such judgment certifies that the case is a fit one for appeal. Section 4(6) which is also a provision granting power of appeal to a Division Bench uses the words "any original judgment order or decree" passed by a Single Judge.

65.The task before us is to discharge the constitutional duty to give effect to the intention of the Legislature to words in the statutory provisions. Of course, the duty is to give effect to the intention. But, the difficulty arises how to resolve when disputes arise manifesting that statutory words quite reasonably sustain more than/- one interpretation, each of which may arguably be considered to give effect to the legislature's intention in the case at hand. "A Judge has to choose the construction which in his judgment best meets the legislative purpose of the enactment." Lord Scarman, Duport Steel v. Sirs (1980) W.L.R. 142. This

inevitably opens the possibility of a divergence between his interpretation and someone else's, including that of another Judge or Judges. Disagreements about what are the appropriate criteria for deciding a question of statutory interpretation are legion.

66. When we hold that the legislative intention is not to provide an appeal from interlocutory or intermediate orders, it is possible to say for critics that that interpretation is wholly contrary to the spirit and intention of the statute. And they will go on to say that Courts are showing a restrictive attitude on a matter of social policy and judicial activism. On the other hand, if we hold that the legislative intention is to provide an appeal before a Division Bench on the interlocutory decisions of serious consequence and moment in proceedings under Article 226 of the Constitution, while the parent proceedings pending before the learned Single Judge is waiting for disposal, they will argue that provisions like Section 5(i) of the Act should be kept to a minimum, and legislature should be assumed to have intended that no multiplication of appeals, when the cry of the day is that more opportunities adding challenge after challenge on a subject of litigation is the most important singular factor which adds to the already crowded filings before superior Courts. I may hasten to add that a Court cannot formulate a justifying reason that it has adopted an interpretation, when faced with two evils, choosing the lesser of the two. Supreme Court has said in 1966 S.C. 529 *Martin Burn Ltd. v. Calcutta Corp.* that "a result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court like the result or not".

67. In a dispute over statutory interpretation, each side can generally argue with some measure of possibility that its interpretation reflects the intention of legislature as expressed in the statutory Words. Yet on some basis or other, a Judge must make his choice, bearing in mind the judge's paramount duty is to give effect to the intention of the legislature as expressed in the words of the statute, We must also bear in mind that besides the constitutional aspects of this duty, there are also significant conceptual problems" associated with the expression, "the intention of Parliament". See MacCallum, *Legislative Intent* (75 Y.L.J. 754) and Twining and Miers, *How to Do Things With Rules* (2nd Ed. 1982, Chap. 5).

68. The basic postulate is that words of the statute constitute a natural and proper starting point for interpretation. Although the words of a statutory rule are in fixed verbal form, this is not to say that there is no leeway for reformulating the rule by formal rearrangement of its parts or by the occasional .substitution, inclusion or deletion of words. See *Federal Steam Navigation v. D.T.I.* (1974) W.L.R. 505 and *Re Beaumont* (1980) All E.R. 206.

69. As early as in 1949 Lord Denning said in *Seaford Estates v. Asher* (1949) 2 K.B. 481 thus: "We do not sit here to pull the language of Parliament to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which

lawyers are too often prone. We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gap and making sense of the enactment than by opening it up to destructive analysis". When I quote the above passage, I feel I am obliged to say that the apparent case with which Lord Denning can impose order on difficult areas of law has earned him praise, but the approach of the .master of rolls to judicial decision making has been criticised as unsophisticated dangerous and unconstitutional See Diplock and Scarman in *Duport Steel Ltd. v. Sirs* (1980) 1 W.L.R. 142 and *Magor and St. Mellons R D.C. v. Newport Corporation* (1952) A.C. 189. I may quote Lord Simon in *Newport case*. "The naked usurpation of the legislative function under the thin disguise of interpretation,?". In *Black-Clawson International Ltd. v. Papierwerke Waldhof-Ashaffenburg* (1975) A.C. 591, Lord Simon, said: "A Judge should give effect to the meaning of what parliament has said and not what Parliament meant to say". This is in substance only another way of saying that a Judge should not re-write the legislation,. for this is the exclusive prerogative of the. legislature.: Certainly, when a Judge attempts to interpret: a statutory provision, the first rule which is bound to remember always is that where the meaning of the statutory words is plain and unambiguous, it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that consequences of doing so would be inexpedient, or even unjust or immoral. Another constraint, if I may say so, a judicial virtue, is that a judge must reject an interpretation which the words of the" statute cannot sustain, even where it seems to him that such an interpretation would give effect to what he understands to be the legislature's intention in passing the Act.

70. I may advert to the question as to what forms of arguments do Judges use to justify the interpretation they have reached. Of course, Judge's function always gives room for interpretation of case law rules and normally judges rely on a variety of arguments. But, our .concern is with those that have particular or in some instances exclusive relevance to 1 statutory interpretation. Three such forms of arguments may be distinguished: those based on. the "language and purpose of the statute; those based on certain kinds of interpretative guidelines and those based on earlier judicial decisions. Vide-Legislation By David R. Miersand Alan C. Page (Page 184).

71. Purposive or teleological arguments have been employed for centuries by English Courts, certainly since the celebrated formulation of the mischief rule in *Heydon's Case* in 1584. For a proper formulation and the approach I am making in this case; here I may confess that I have found this a difficult case than I think, My Lord the-Chief . Justice has done with felicitous case may be on account of his past experience in dealing the same question and his deep knowledge and thoroughness of comparative law of which a blink flash alone he has given in his judgment. I felt before reading the judgment of His Lordship Chief Justice that on certain respects, there is much to be said, if I may say so, for the view which some of the Judges of this Court has taken earlier.

72. I may refer to the rules of interpretation, which guide me in this task. I do this since extensive and expansive arguments were advanced counsel on both sides. "For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1) what was the common law before the passing of the Act (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the Parliament hath resolved and appointed to cure the disease of the common wealth; (4) the true reason of the remedy". And the obligation of all the judges is always to make such construction as shall suppress the mischief and advance the remedy and to suppress subtle intentions and evasions for the continuance of the mischief and pro private commodos and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bona public. (76 E.R. 637, 638).

73. Once it was convinced that the mischief rule should be confined to the exploration of the defect and its remedy to be ascertained from the text of the Act as a whole, but not beyond it. Vide *Black Clawson International Ltd v. Papierwerke Waldhof-Aschaffenburg* (1975) A.C. 391. This principle may be distinguished from the present conception of a purposive argument, and seen plainly in the judgment of His Lordship Chief Justice wherein His Lordship has referred to evidence of legislative intention ascertained from materials extraneous to the Act like the debates and introductory remarks of the Minister who moved the Bill. Certainly there are both limitations and controversy about the kinds of materials that may be used and the inferences that may be drawn from extraneous aids like the original bill, the debate in Parliament, the report of the Select Committee and the amendments made in the original bill In the decision referred to above (1975) A.C. 592 Lord Diplock make a remark, of course, in a slightly different context that "Parliament is sovereign only in respect of what it expresses by the words used in the legislation it has passed".

74. The English Courts are taking an attitude of a restraint of unwillingness to extend in the statutory words *casus omissus*-" the inexplicable and probably inadvertent failure of the draftsman to use words entirely apt to cover the instant case? Statutory Interpretation (1976) p. 10.

75. One of the counsel for the Respondent elaborately argued the case based on the principle of *casus omisus*. Another argument that advanced very strongly is the rule that the judges should avoid an interpretation that would lead to a result that is absurd or inconsistent with the rest of the statute and in that case, the ordinary meaning of the words should be modified so as to avoid such a result. This rule is sometimes called the golden rule and the alternative rule to the literal rule of interpretation which operates, in cases where the literal interpretation would lead to a plain absurdity or anomaly. The locus classics of the golden rule is Lord Wensleydale's dictum in *Grey v. Pearson* 1857 6 H.L.C. 61, 106. The modern formulation of this rule is seen in *Maunsell v. Olins* (1975) A.C. 373, 391. There is a very learned discussion of the circumstances under which it is

permissible for a Court to remedy what it perceives to be an anomaly in *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 W.L.R. 231.

76. The current judicial practice, which can be discerned, if we make an analysis of cases of interpretation of statutes dealt with by the Supreme Court and the Court of Appeal and House of Lords is a mixture of both literal and purposive interpretation. It is expressed as a series of questions thus: "What was the statute trying to do? Will the proposed interpretation give effect to that object? Is the interpretation ruled out by the language?" It has to be noted that the above formulation presents the two aspects of purpose and language as complementary parts of a whole enterprise and secondly that the interpretative process begins with an examination of the statute's purposes. There is a clear formulation in *Driedger's Construction of Statutes*.

77. If I may say so, this formulation has been "religiously followed by His Lordship Chief Justice in his judgment. The formulations are these:

(1) The Act as a whole is to be read in its entire context so as to ascertain the intention of the Parliament (the law as expressly or impliedly enacted by the words), the object of the Act (the ends sought to be achieved), and the scheme of the Act (the relation between the individual provisions of the Act).

(2) The words of the individual provisions to be applied to the particular case under consideration are then to be read in their grammatical and ordinary sense in the light of the intention of Parliament embodied in the Act, and if they are clear and unambiguous and in harmony with that intention, object and scheme and with the general body of the law, that is the end.

(3) If the words are apparently obscure or ambiguous, then a meaning that best accords with the intention of Parliament, the object of the Act and the scheme of the Act, but one that the words are reasonably capable of bearing, is to be given to them.

78. In making the above formulations, *Driedger* has relied on Lord Diplock and Simon, who have attempted to systematise the basic judicial practices. Vide *Maunsell v. Oliris* (1975) A.C. 373, *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 W.L.R. 231 and *Hanlon v. Law Society* (1980) 2 W.L.R. 765. In *Ealing L.B.C. v. Race Relations Board* (1972) A.C. 342, Lord Simon has observed that the Courts have live principal avenues of approach to the ascertainment of the legislative intention:

1. examination of the social background, as specifically proved if not within common knowledge, in order to identify the social or juristic defects which are likely subject of remedy;
2. a conspectus of the entire relevant body of the law for the same purpose;
3. particular regard to the long title of the statute to be interpreted (and, where available, the preamble), in which the general legislative objectives will be stated;

4. scrutiny of the actual words to be interpreted in the light of the established canons of interpretation;

5. examination of the other provisions of the statute in question (or of other statutes in *pari materia*) for the light which they throw on the particular, words which are the subject of interpretation.

79. On a reading of the judgment of His Lordship Chief Justice, I am fully convinced that the analysis and reasoning formulated by the Chief Justice is based on the above principles formulated by Lord Simon.

80. Now, the preliminaries are over. I may begin with the earlier decisions of this Court before adverting to the history of the legislation and the necessity of passing the legislation in question. Of course, I have to advert to the interpretation of similar provisions in the various enactments dealing with the appellate power over interlocutory orders, passed by a Single Judge by a Division Bench and in that context, I wish to refer to some of the decisions of the Supreme Court, which have already been referred to by His Lordship Chief Justice in the exhaustive discussion of all the decisions of the Supreme Court, on the subject.

81. As a preliminary I have brought to my mind a clear picture of the basic principles of interpretation, so that I may not jump the bounds of accepted norms of interpretation of a provision in a statute as prescribed by the decisions of the English Courts and Supreme Court,

82. I turn straight to the decisions of this Court, which have considered the content, width, scope and application of Section 5(i) of the Act. I shall be very brief in discussing the earlier decisions of this Court, but I feel I have to begin with the decisions reported in 1968 KLT 390 *State of Kerala v. Thankamma and Ors.* A Full Bench of this Court in a peculiar circumstance held that an appeal, would lie u/s 5(i) of the Act, when constitutional validity of the orders impugned was decided by a learned Single Judge, but not disposing of the whole case. Relying on the decision, *Kasi v. Ramanathan Chettiar* 1947 M.W.N. 723, Madhavan Nair, J. held that the present "judgment"-it is styled so by the learned Judge who delivered it - which determines the main point in the case (namely, the constitutional validity of the impugned Order) on which the relief's sought, in the O. Ps. depends, largely is a preliminary judgment within the meaning of the CPC and is appealable as such u/s 5(i) of the High Court Act". This position was taken in a judgment which was found to be not disposing of the whole proceedings under Article 226 of the Constitution of India, at a time when there was no specific provision in the CPC that the Code is not applicable, as far as the proceedings under Article 226 of the Constitution of India. In *Kasi v. Ramanathan Chettiar* 1947 M.W.N. 723, Patanjali Sastri, J., as he then was, with concurrence of Tyagarajan, J. observed:

Even under the old Code which did not expressly provide for the passing of a "preliminary decree" in any suit, Their Lordships of the Judicial Committee

stressed the expediency of passing such decrees So as to make it possible to prefer an immediate appeal to settle that part of a case on which the decision of the other parts depended,

83. In 1970 KLT 644 Kunju v. State of Kerala, a Division Bench of this Court was considering whether an appeal before a Division Bench is maintainable u/s 5(i) of the Act from an order rejecting a prayer in an interlocutory petition to allow the admission of some grounds in support of the prayer in the original proceedings. It was held that "the petition for quashing the notification is still pending before the Single Judge and his rejection of some of the grounds urged in support of the prayer is at best a finding regarding these grounds and not a judgment or order within the meaning of Section 5 so as to attract the appeal conferred by that section". Though this is a very short judgment, without much discussion, the Division Bench refused to entertain an appeal not on the ground that the order refusing or rejecting some of the grounds in support of the prayer in the original proceedings, the order, reasoning, that no appeal is maintainable against the order, which is interlocutory in character, while the original proceedings under Article 226 is pending, but on the ground that the refusal to incorporate certain grounds is at best a finding regarding these grounds and not a judgment or order within the meaning of Section 5 so as to attract the power of appeal conferred by that section.

84. 1983 KLT 764 State of Kerala v. Sudarsan Babu is one of the important decisions of this Court dealing with the content of Section 5(i) of the Act. A Full Bench of this Court said that if Section 5(i) is to be understood as enabling a party to file an appeal against any order interlocutory or otherwise even an order granting an adjournment will be appeal able to a Bench of two Judges. Stating thus, the Full Bench said that the scope of Section 5(i) is not that. To this extent, we can agree. The Full Bench proceeded to say that the term "order is found in association with the term "judgment" and therefore necessarily it takes its colour from such association. In order to substantiate this proposition, the Full Bench added that Section 5(i) applies not only to writ proceedings, but to all proceedings of original jurisdiction. In the exercise of original jurisdiction the Single Judge may dispose of a proceeding by a judgment in certain cases and by an order in other cases. In either. of such cases since the disposal is an adjudication, there is finality attached to it and the judgment or order operates to decide the issue between the parties,

85. It was a case of an appeal filed by the State of Kerala against an order of a learned Single Judge of this Court, finding no ground for review of an order directing issue of notice to the Respondents in the original petition including Respondents 2 and 3, the Speaker, Kerala Legislative Assembly and the Secretary, Kerala Legislative Assembly, respectively. The Advocate General appeared before the learned Single Judge and submitted that the Court must cancel its order directing issue of notice to the Speaker of the Kerala Legislative Assembly as well as its Secretary. The learned Single Judge declined to cancel

the order issuing notice in the O.P. to the Speaker of the Legislative Assembly and its Secretary on the ground that the averments in the original proceedings require further examination and for, a proper examination, notice to the Speaker, of the Legislative Assembly and its Secretary is necessary. The order refusing to cancel the issue of notice was challenged in appeal before the Division Bench u/s 5(i) of the Act. The Full Bench said: "The proceedings under Article 226 are proceedings in original jurisdiction. Thus an appeal will lie against every judgment or order of the Single Judge in such proceedings to a Division Bench. If Section 5(i) is to be understood as enabling a party to file an appeal against any order interlocutory or otherwise even an order granting an adjournment will be appealable to a Bench of two Judges. That is not, according to us, the scope of Section 5(i)".

86. The only reason stated is the term "order" is found in association with the term judgment and therefore necessarily it takes its colour from such association. The Full Bench referred to 1968 KLT 390 also. Referring to several decisions, the Full Bench found that the order challenged was not even an order passed after hearing those who may be aggrieved by the adjudication, and therefore, it will be wrong to say that the appeal filed by the State is against an order finally adjudicating any matter between the parties who are concerned with such adjudication and as a result, the Full Bench held that the appeal in the context is not maintainable.

87. It is interesting to note that the Full Bench also made an observation to support the non-maintainability of the appeal. The learned Advocate General conceded that, whatever this Court may decide in that particular case will not be binding on Respondents 2 and 3 (Speaker of the Legislative Assembly and the Secretary) as they are not parties to the appeal and so far as the State is concerned, the State being only an informant, is not obliged to carry out any direction of this Court. The Full Bench observed that in such circumstances, it would be a futile exercise on the part of the Court to adjudicate on the appeal. Certainly a final disposal of the appeal pre-supposes that it will have consequences, I feel that this decision is not very helpful to us to resolve the question raised here. But, there are certain observations which have been very much relied on by counsel who supported that no appeal will lie against an interlocutory order. The most important observation, relied on by counsel supporting the case of non-maintainability of an appeal is that the term order is found in association with the term judgment and therefore necessarily takes its colour from such association. But, in paragraph 13 of the judgment, the Full Bench said that the term order in Section 5(i) must have the character of an adjudication which is final and binding on the parties. The Full Bench impliedly indicated that the character of the order whether it is final or not is also relevant to define the scope, content and width of Section 5(i) of the Act. It is not said certainly that the finality of the order must be the finality of the original proceedings. It can be the finality of the order in the interlocutory matter, affecting the rights of the parties and of serious consequences to the parties

cause before the Single Judge. The Full Bench said that the order with which they were concerned is not an adjudication of the rights of the parties.

88. In 1985 KLT 153 *Damodaran v. Sankaran* the question was considered little elaborately by Justice M.P. Menon. The learned Judge relied on the previous enactments on the subject and the, history of the legislation in the context of the relevant provisions of the States Reorganisation Act, 1956. This case was not directly concerned with Section 5(i), but related to the scope of Section 5(ii). M.P. Menon, J. said that the object of Clauses (ii) and (iii) of Section 5 is to confer additional powers on a bench of two Judges, i.e., powers of appeal from judgments of Single Judges disposing of first appeals and second appeals. The power u/s 5(ii) and (iii) was considered as an extension of the power u/s 4 of the Act. This has got little significance. Really, Sub-Section 5 also is in the nature of grant of power of appeal to the Division Bench. It cannot be said that the Division Bench's power source is only Section 4. Section 4 certainly deals with the power, of Division Bench. In the similar sense, Section 5(i) also deals with the power of the Division Bench over judgment, order, or decree of a Single Judge. After stating that Section 5 is an extension of Section 4 and that Clauses (ii) and (iii) of Section 5 cannot be read in isolation from Clause (i), His Lordship further said that the judgment in Section 5(i) is intended to mean a decree or the result of any other adjudication which partakes of that character, as distinct from decisions in the nature of orders, Saying so, it was found that Section 5(ii) cannot include orders passed in interlocutory or ancillary matter. It has to be noted that according to M.P. Menon, J. the policy behind Section 4(6) is evidently to confine appeals from judgments and orders of a Single Judge only when they are rendered in exercise of original jurisdiction, and it cannot be lightly assumed that this policy was discarded by the legislature when it proceeded to Clause (ii) of the next section.

89. It is difficult for me to agree with M.P. Menon, J. when His Lordship has said "the purpose behind Section 5 of the Act, was not to confer new powers on a bench of two Judges or to confer new rights on litigants-a right which was practically unknown to them under the old dispensation". The observation that "a right which was practically unknown to them under the old dispensation" is not quite correct when we investigate the right in regard to appeal to a Division Bench for the litigants in Kerala, which formed part of different States including State of Madras. This aspect of the matter has been very carefully considered by the leading judgment of My Lord the Chief Justice. I shall advert to it at a later stage a little more, when I examine the history of the legislation. Anyhow, I fully agree with the observation of His Lordship Chief Justice and I do not agree with the view taken in 1985 KLT 153, insofar as they are related to Section 5(i), though it was a case which concerned the question of the content of Section 5(ii).

90. Now, I may advert to the decision reported in 1985 KLT 201 *State of Kerala v. Krishnankutty*. A Division Bench of this Court, of which one of us is a party, considered very critically and relying on the precedents of the Supreme Court

and this Court, held that however wide the expression "judgment or order", occurring in Section 5(i) may be, an appeal from the judgment or order of a Single Judge, will lie to a Bench of two Judges, only if the judgment or order is final.

91. This judgment has been considered by His Lordship Chief Justice in the setting of the ratio of all the relevant Supreme Court decisions, giving new dimensions to the words judgment, order, interlocutory order, final order and intermediate order. I fully agree with the approach made by His Lordship Chief Justice. The Division Bench has given much reliance on 1983 KLT 764 (P.B.) and Central Bank of India Vs. Shri Gokal Chand, . Some of the very important decisions, particularly, Amar Nath and Others Vs. State of Haryana and Another, ; Madhu Limaye Vs. The State of Maharashtra, have not been adverted to by the Division Bench. Of course, the Division Bench had no occasion to consider a very important decision reported in AIR 1987 S.C. 799. Though the Division Bench made a dichotomy of interlocutory orders on the basis of the nature of the order stating orders which are steps taken for the final adjudication of the original proceedings, like summoning persons, production and inspection of document in rare cases, issue of commission and fixing the date for hearing and the like, are procession orders assisting the parties in the prosecution of their case to reach the final adjudication pending the proceedings and said that these kinds of orders are intended to regulate the procedure only and do not affect any right or liability of the parties and so not appeal able, (emphasis added). The Division Bench further said that there are a second set of orders though interlocutory, since they are passed pending the original proceedings, having distinct character different from the orders enumerated earlier, if I may say so, orders passed which are affecting substantial rights of the parties even during the pendency of the proceedings. The Division Bench was prepared to accept the dichotomy but said that "however wide the expression, "judgment or order", occurring in Section 5(i) of the Kerala High Court Act, 1958 may be, an appeal from the judgment or order of a Single Judge, will lie to a Bench of two Judges, only if the judgment or order is final". It is clear from the Division Bench decision- that pending the final disposal of the original proceedings, there can be "procedural orders and interlocutory orders", Here also, a distinction is made between the procedural orders and interlocutory orders. Of course, the Division Bench said that both the orders will not be within the sweep of Section 5(i) of the Act. But, ultimately, the Division Bench said that if the order under appeal does not finally dispose of the matter, it is not a final order at all, and it is only an interim order or direction in a pending original petition, and, no" appeal would lie before a Division Bench.

92. I may briefly examine the possibility of looking the matter in a different angle in the light of the three decisions I have already referred to. Though Amar Nath and Others Vs. State of Haryana and Another, was a case under the Code of Criminal Procedure and relating to the power of revision in respect of an interlocutory order, a very elaborate discussion is seen made in this decision. The

Court referred to Mohan Lal Magan Lal Thacker Vs. State of Gujarat, and pointed out that "the finality of an order could not be judged by correlating that order with the controversy in the complaint. The fact that the controversy still remained alive was irrelevant. In that case, this Court held that even though it was an interlocutory order, the order was a final order. (emphasis added)

93. The Supreme Court also referred to Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, That was a case u/s 115 of the Code of Civil Procedure. The quotation relied on from Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, is this:

A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy.

Several cases under the various provisions of the Letters Patent of the High Courts in India were also referred to, where appeals were found entertainable by a Division "Bench from an order passed by a Single Judge. The Supreme Court said that the order may appear to be an interlocutory one where it does decide one of the aspect of the rights of the parties, then it is, appeal able. Quoting instances, the Court said an order of a learned Single Judge granting an order of temporary injunction, was held by the Full Bench of the Allahabad High Court Standard Glass Beads Factory and Another Vs. Shri Dhar and Others, as being an interlocutory order having decided some rights of the parties, and was, therefore, appealable. To the same effect are the decisions of the Calcutta High Court in Union of India v. Knetra Mohan Banerjee A.I.R 1980 Cal 190, Gokal Chand v. Sanwal Das A.I.R 1920 Lab 326, Begum Aftab Zarrtani v. Shri Lal Chand Khanna AIR 1969 Del 85 and Har Prasad Wali v. Naranjan Nath Matoo AIR 1959 J&K. 139.

94. Ultimately, Fazal Ali, J. speaking for the Court said "We are, therefore satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the Appellants If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the Appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but. one which decided a serious question as to the rights of the appellants to be put on trial".

95. In Madhu Limaye Vs. The State of Maharashtra, Untwalia, J. considered the question again under the revisional power under the Code of Criminal Procedure. The Supreme Court approved what has been said by Fazal Ali, J. in Amar Nath and Others Vs. State of Haryana and Another, referred to AIR 1949 1 (Federal Court) and said that in AIR 1949 1 (Federal Court) Kania, C.J. referred to the decision of Lord Esher M.R. in Salaman v. Warner (1891) 1 Q.B. 734 . The quote from the decision of Lord Esher M.R. is significant and I feel that it requires repetition, "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory". The Court said that to the same effect are the observations quoted from the judgments of Fry L.J. and

Lopes L.J. It was also said that if the test laid down by Lord Esher M.R. is applied, then the order in revision passed by the High Court was not a final order within the meaning of Section 205(1) of the Government of India Act, 1935. Untwalia, J. then proceeded on to say in certain cases, depending upon the intention of the Legislature, it is not safe to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in AIR 1949 F.C. but, yet it may not be an interlocutory order pure or simple. Some kinds of orders may fall in between the two. Finally the Court indicated that the type of order with which the Court was concerned in this case *Madhu Limaye Vs. The State of Maharashtra*, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397. The Court made the final opinion that "it must be taken to be an order of the type falling in the middle course". Of course, the Court has relied on as I said earlier, *Amar Nath and Others Vs. State of Haryana* and Another, *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, and *Ramesh v. Patni* AIR 1966 S.C. 1455, where Shelat, J. observed: "the finality of that order was not to be judged by co-relating that order with the controversy in the complaint, viz. whether the Appellant had committed the offence charged against him therein. The fact that the controversy still remained alive is irrelevant."

96. The Supreme Court very clearly said that there will be insurmountable difficulty in applying the ratio of the decision reported in 1949 F.C. 1. I am adverting to these cases only to point out the fact that these facets of the question, viz. that an interlocutory order is not always converse to final order, have not been focused and spotlighted in 1985 KLT 201, though the Division Bench (1985 K.L. T. 201) was prepared to have a dichotomy of interlocutory order, depending upon the nature of the order and its consequences.

97. The Division Bench has relied on the decision reported in *Central Bank of India Vs. Shri Gokal Chand*, only to indicate that interlocutory orders which are in the nature of steps taken and orders passed like summoning of persons etc. during the progress of a case, for a final disposal of the case is not appealable. It is clear from the judgment *Central Bank of India Vs. Shri Gokal Chand*, that the object of Section 38(1) of the Delhi Rent Control Act, gives a right of appeal to a party aggrieved by some order which affects his right or liability. The Supreme Court observed that the context of Section 38(1) would persuade the Court to understand the words "every order of the controller made under this act though very wide, do not include interlocutory order, which are merely procedural and do not affect the rights or liabilities of the parties. It is pertinent to note that the words used are interlocutory orders which, are merely procedural. By illustrating that the controller may pass many interlocutory orders, under Sections 36 and 37, such as orders regarding summoning of witnesses, discovery, production, and inspection of documents issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing, and the admissibility of a document or the relevancy of a question and

characterised those orders as interlocutory orders which are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding. Significantly the Court said they regulate the procedure only and do not affect any right or liability of the parties. It is also stated in the judgment that even an interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it "affects some right or liability of any party".

98. In paragraph 2, the Supreme Court has said u/s 36 and 37(2) the Controller may pass interlocutory orders in a pending proceeding. So, orders passed in a pending proceeding affecting, some right or liability of a party, even though it is interlocutory, in character is appeal able. The observations in Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, also point to the fact that the interpretation of a provision in the Companies Act providing for an appeal "from any order or decision made or given in the matter of the winding up of a company by the Court," though wide would exclude merely procedural orders or those which did not affect the rights of liabilities of parties. What is excluded is "merely procedural orders". What is taken in for the purpose of the appeal is orders which affect the rights or liabilities of the parties. No differentiation has been made on the fact that the parent proceeding is alive or not. It is significant and assumes great importance.

99. The Division Bench (1985 KLT 201) as I said earlier, has relied on 1983 KLT 764 State of Kerala v. Sudarsan Babu and I have explained the context in which that decision has been rendered. The other decision that has been relied on is 1970 KLT 644 P. K. Kunju v. State of Kerala. This decision also has been explained as not an order and it was only a finding. 1976 KLT 326 Mohammed faji v. Ayamma a decision relied on by the Division Bench is one which was directly concerned with-the interpretation of the expression judgment occurring in Section 5(3) of the Act. it was observed that the expression judgment occurring in Clause (iii) of Section 5 should be understood in the same sense the word judgment has been employed in Article 133(1) of the Constitution and it connotes a decision pronounced: by the Court on the merits of the case, finally determining rights of parties. Of course, Baiakrishna Eradi, J., as he then was, relied on Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another, 1970 S.C 1168 and Prakash Chand Agarwal v. Hindustan Steel Ltd. AIR 1911 S.C. 2319, it was observed that by the order sought to be appealed against, there has not been any adjudication by the learned Single Judge upon the merits of the second appeal. True, the Court also said that the second appeal is still alive proceeding pending before the Court and the points arising for determination therein are yet to be adjudicated upon. Saying so, it was said that the order sought to be appealed against is not a judgment within the meaning of the expression as used in Clause (iii) of Section 5 of the Act.

100. It has to be remembered that Section 5(iii) exclusively deals with a judgment of a Single Judge in the exercise of appellate jurisdiction. I am of the

opinion that the above decision (1976 KLT 326 F.B.) cannot be pressed into service for holding that the word order used in section, 5(1) should be a final order and would posit or predicate a situation wherein the original proceedings remained not alive. The Division Bench (1985 KLT 201) has referred to AIR (37) 1950 Federal Court Mohammed Amin Brothers Ltd. v. The Dominion of India and the observation of B.K. Mukherjee, J. as to the test for determining the finality of an order. In fact, the first part of the quote from the above decision by the Division Bench also emphasises the fact "whether the judgment or order finally disposed of the rights of the parties". The Federal Court of course quoted AIR 1933 P.C. 50 Abdul Rahman v. D.K. Cassim and Sons and said that "the finality must be a finality in relation to the suit. If after the order the suit is still alive suit in which the rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive and has got to be tried in the ordinary way, no finality could attach to the order."

101. The other two decisions relied on, viz. Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another, and Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd., of course, have quoted the observations of Sir George Lowndes in AIR 1933 P.C. 50 . It has to be remembered that in Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd., , the Court was considering a question under Article 133-judgment, decree or final order of the High Court The suit was decreed in the absence of the Defendant. The application by the Defendant to set aside the decree was rejected by the Court. The High Court restored it to file. The Supreme Court held that the suit was very much alive and it could not be treated as a final, adjudication and hence the certificate granted by the Court was premature and incompetent. In this context, the Supreme Court said that Article 133 does not contemplate bringing an appeal to the High Court, since it is still a live suit and in which further proceedings are to be taken.

102. In Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another, , the Supreme Court was considering the content in the expression final order occurring in Article 133(1) of the Constitution. There, the Supreme Court said that the final order is a final decision on the rights of the parties in dispute in a suit or proceeding and added that if the rights of the parties in dispute in the suit or proceeding remain to be tried, after the order, the order is not final. Of course, the Supreme Court considered the expression "judgment" in Article 133(1) and said that it would mean a final adjudication by the Court of the rights of the parties, and that an interlocutory judgment, even if it decides an issue or issues without finally determining the rights and liabilities of the parties, is not a judgment, however, cardinal the issue may be. The Supreme Court was only about the final order in Article 133(1) of the Constitution and in that context referred to section 205 of the. Government of India Act, 1935 and Section 109 of the Code of Civil Procedure. The Supreme Court also referred to an earlier decision- AIR 1920 P.C. 86 Ramchand Manjilal v. Govardhandas v. Vishindas

Ratan Chand wherein the order of the Judicial Commissioner of Sind vacating an order of stay granted u/s 19 of the Indian Arbitration Act, and refusing to stay a proceeding was found to be not a final order within the meaning of Section 109(a) of the Code of Civil Procedure:

103. It has to be noted that the Supreme Court in this case was really concerned about the content of the word final order in Article 133(1). It has no direct bearing since u/s 5(i), the expression used is only order and introducing a word to qualify the order to make it a final order by a judicial interpretation, it may be inept to accept the process of reasoning of the Supreme Court in the case Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another, . In the final paragraph of the judgment, the Supreme Court observed that the Supreme Court is not departing from the ratio of the decision in Mohan Lal Magan Lal Thacker Vs. State of Gujarat, .

104. I am of the view that it is difficult to agree with the conclusion of the Division Bench since it only considered the order in apposition to interlocutory orders, though initially an attempt was made to have a division of the interlocutory orders into two classes. But that dichotomy was not carried forward in reaching the conclusion that an appeal would not lie u/s 5(i) of the Act on orders, though interlocutory affecting the vital rights of the parties, even when the original proceedings are alive. I feel that the power of appeal u/s 5(i) against an interlocutory order has to be decided fundamentally not based on the fact whether the original proceedings are pending or not, but on other considerations which I have already discussed in the light of the observations of the Supreme Court. I agree with great respect the view taken by His Lordship Chief Justice in respect of the ratio of the decision in 1985 KLT 201.

105. I fully endorse with the view that the provisions of a statute have to be construed by examining every word of the statute in the setting and context of the words used in that particular provisions which come up for interpretation. Reading words in their context is a legal concept of interpretation. This concept has got an external aspect. The historical setting also in a larger perspective encompasses the doctrine "reading words in their context" (See Maxwell on Interpretation of Statutes - page 47).

106. "The Court", said George Jessel M.R., "is not to be oblivious of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells I Court, and prior judgments tell this present Court, what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what It means, and not with a view to extending it to something that was not intended? Helme v. Guy (1877) 5 Ch. D. 901 at 905. His Lordship Chief Justice has adverted to the decision in Attorney General v. Prince Ernest August of Hanover 1957 A.C. 436, and quoted what Vicount Simona has said.

107. The above decision is also an authority for the proposition that the general rule where the result of one of two interpretations would be to lead to an absurdity, must be judged of as it would have appeared absurd at the time of passing of the Act. See also *Corocraft Ltd. v. Pan American Airways* (1969) 1 All E.R. 82. The history of the legislation as an external aid to understand the correct import of Section 5(i) has been clearly excreted in the judgment of His Lordship Chief Justice. Keeping in mind that although we can have in mind the circumstances, when the Act was passed and "the mischief which then existed so far as these are common knowledge". we can only use these matters as an aid to construction of the words which Parliament has used. We cannot encroach on its legislative function by reading in some limitation which we may think was probably intended but, which cannot be inferred from the words of the Act, *Att. General for Northern Ireland v. Galuigher* (1963) A.C. 349.

108. In considering the history of the legislation at the time when Kerala High Court Act 1938 came into force, I have to note that Letters Patent (Madras) including Clause 15 thereof was applicable to High Court of Kerala in respect of matters arising in the erstwhile State of Madras. It is also clear that the position is not the same as far as areas of former Travancore-Cochin State are concerned. There Section 21 of the Travancore-Cochin High Court Act, 1125, as amended in 1,952 applied. Further, it has to be noted that as far as interlocutory orders are concerned, the-appeal-ability was depending upon the areas from where the cases arose. If the case arose in the Malabar area, an appeal under Clause 15 of the Letters Patent (Madras) was entertainable applying the principle laid down by the Madras High Court in *Tuljartimraw v. Alagappa Chettiar* ILR Mad. 1 (F.B.) and *K.G. Rangaswami Chettiar and Co. and Others Vs. K.R. Eswaramurthy Goundar*, , No decision to the point is available as far as Travancore Cochin High Court is concerned. This happened because the Letters Patent (Madras) was applicable to the transferred territories (Malabar, area and Kasaragod Taluk) as per Section 5(i) (b) of the States Reorganisation Act. As such, Clause 15 of Letters Patent (Madras) continues to apply even after 1st November 1956 when those territories came under the jurisdiction of the Kerala High Court. The decisions reported in 1959 Mys. L.J. 270 *Hasansab v. Mudakappa Laxmappa Nalwadi* and ILR 1961 Mys. 706 *Rao Saheb Kasirao Dnsai v. Tammanna Krishnaji Bommaji* have held that cases arising from the transferred territories of Bombay State to Mysore, the Mysore High Court could exercise power under Letters Patent (Bombay) in view of Section 52. The decision reported in *Dadh Nathu Rajah (Dead) by Lawyers Vs. Angha Nathu Jamal (Dead) by Lawyers and Others*, upheld the view expressed by the Mysore . High Court. It was held that the right of appeal under the Saurashtra Law was applicable and any restriction of that law is ineffective.

109. Though the principle, "*contemporanea expositio*" of a principle which enumerates that the best exposition of a statute or any other document is that which it has received from contemporary authority. As an extension of this principle, it is also said that the language of a statute must be understood in the

sense in which it was understood when it was passed, and those who lived at or near the time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions.

110. When the Legislature-thought that an Act dealing with the power of appeal to be exercised by a Division Bench in regard to decisions of a Single Judge is necessary on account of the fact that a new State was formed which took in areas from the Madras State and State of Karnataka, it is only normal to presume that the Legislature, should have taken into account the provisions relating to appeals from a Single Bench to a Division Bench. In Madras State Letters Patent was the law. That law provided an appeal even from interlocutory orders on an interpretation of judgment. See the decision reported in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, - paragraph 123:

In the Instant case, as the order of the trial Judge was one refusing appointment of a receiver and grant of an ad interim injunction, It is undoubtedly a judgment within the meaning of the Letters Patent both because in view of our judgment, order 43, Rule 1 applies to internal appeals in the High Court and apart from it such an order even on merits contains the quality of finality and would therefore be a judgment within the meaning of Clause 14 of the Letters Patent. The consistent view taken by the Bombay High Court in the various cases noted above or other cases which may not have been noticed by us regarding the strict interpretation of Clause 15 of the Letters Patent are hereby overruled and the Bombay High Court is directed to decide the question in future in the light of our decision.

111. The Travancore-Cochin State shed its status as a B State, when the Kerala State came into existence. The areas comprised in Travancore-Cochin State, part of Madras State and part of Karnataka State, forming as one State, acquired the status of other states in the Union of India like State of Madras, State of Bombay, State of Bengal etc. where the provision for appeal before the Division Bench was provided in Letters Patent. As I said earlier, the provision in Letters Patent allowed an appeal from interlocutory orders (See AIR 1981 SC 1786).

112. If the language of the provision permits then there is no reason for me to think that the Kerala Legislature had deviated from the position regarding appeals in the other like States and to limit the appeal to Division Bench in original proceedings only to a final decision disposing of the original proceedings. I feel that an addition of a word final to precede the word order in the light of the history of the legislation will be attributing an intention to the legislature which would produce an unreasonable result and so, the principle "an intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available" is applicable. *Artemiou v. Precopiou* (1966) 1 Q.B. 878.

113. I do not think I can supplement anything more to the exposition of the

historical background discussed by His Lordship Chief Justice in his judgment and so, I desist to make any serious attempt to deal with that aspect of the matter.

114. The principle is that in attempting a statutory construction, the object of the statute or the provision also " has to be kept in mind and statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. I do not want to repeat the quotes made from Crawford on Construction of Statutes and Sutherland's Statutory Construction in the main judgment of His Lordship Chief Justice. I do not think that there is any substance in the argument that a liberal construction holding that an appeal would lie against interlocutory orders affecting rights and liabilities of the parties u/s 5(i) would open the floodgates supported by the supplementary argument that there is a remedy provided under Article 136 for challenging an interlocutory order in a pending proceeding under Article 136 of the Constitution. The, Supreme Court has made it very clear in Shah Babulal's case that a Court is not justified in interpreting a legal term. So as to deny appeals even against urgent orders to litigants having genuine grievances so as to make the scapegoats in the guise of protecting vexatious appeals. In such cases, a just balance must be struck so as to advance the object of the statute and give the desired relief to the litigants, if possible. To shirk the burden and push it on to the Supreme Court, at any rate, will amount to a sin without a name considering the heavy filings and pendency of appeals before the Supreme Court. We feel that we have no justification to base our interpretation on the feeling and faith that the litigant has got a remedy if he is aggrieved by an interlocutory order under Article 136 of the Constitution.

115. We are only deciding the question whether appeal would lie against an interlocutory order. The question is whether an appeal has to be admitted when once it is filed is totally a significant different matter of vital importance. We have got a screening process already in practice by posting the appeals even on final decisions of the" learned Single Judge in proceedings under Article 226 of the Constitution, and so, naturally appeals if provided, will be filtered before they are admitted and posted for consideration.

116. To sum up, I agree with the conclusions of the learned Chief Justice and hold that an appeal is maintainable against an interlocutory order provided it is a final order en the miscellaneous petitions in the sense that it is not an ad interim order if the order substantially affects or touches upon substantial rights and liabilities of the parties or are matters of moment or matters which would cause real legal prejudice to the parties, even though the parent original proceedings is alive. The nature of the order appeal able , can be classified in the category of "intermediate orders", within that frame in which the Supreme Court has used that term in Madhu Limaye Vs. The State of Maharashtra, . It is not necessary that to attract Section 5(i) to maintain an appeal that the order" should have the label of a final order in the sense that it disposes of the original proceedings under Article 226 of the Constitution.

ORDER

In view of the opinion of the majority, we hold that the" Writ Appeals are maintainable.