

(2014) 09 SHI CK 0152

In the High Court Of Himachal Pradesh

Case No : LPA No. 693 of 2011 a/w OSA No. 12 of 2006, LPAs No. 17 of 2006, 130, 131 of 2008, 34, 180 of 2013 and 85 & 139 of 2014

Mukut Hotels and Resorts Private Limited

APPELLANT

Vs

Khullar Resorts Private Limited

RESPONDENT

Date of Decision : 06-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 100-A, 104, 104(1), 104(2)
Guardians and Wards Act, 1890 — Section 47, 48

Citation : AIR 2015 HP 22

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Bhupender Gupta, K.D. Sood, Ajay Kumar and G.C. Gupta, Senior Advocate, Karan Singh Kanwar, Y.K. Thakur, Sanjeev Sood, Dheeraj K. Vashisth, Dinesh Bhanot, Anu Tuli Azta and Meera Devi, Advocate for the Appellant; R.L. Sood, Ajay Kumar and K.D. Sood, Senior Advocate, Surinder Prakash Sharma, Dheeraj K. Vashisth, Sanjeev Sood, Mukul Sood, Anuj Nag and Ajay Mohan Goel, Advocates, Shrawan Dogra, Advocate General, Romesh Verma and V.S. Chauhan, Additional Advocate Generals, J.K. Verma and Kush Sharma, Deputy Advocate Generals, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—The moot question for consideration is - whether these appeals are maintainable?

2. Learned counsel for the parties stated that Section 100-A of the CPC (hereinafter referred to as "the CPC") came up for consideration before the Apex Court in a case titled as P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, wherein it has been held that Letters Patent Appeal is not barred, in terms of Section 100-A, from a judgment/order made by a learned Single Judge in original proceedings, thus, argued that the Letters Patent Appeal filed against the judgment or against the order, which has trappings of the judgment, is maintainable.

3. Mr. Bhupender Gupta, learned Senior Counsel, also argued that this issue was

discussed by the Full Bench of this Court in a case titled as Jaswant Singh Saraff & Ors. versus State of Himachal Pradesh & Ors., reported in Latest HLJ 2007 (HP) 465.

4. We deem it proper to reproduce Section 100-A of the CPC herein:

"100-A. No further appeal in certain cases.-Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

5. While going through the said provision of law, it is crystal clear that an appeal from judgment/order made by a learned Single Judge in original proceedings is not barred in terms of the mandate of Section 100-A of the CPC.

6. It is apt to reproduce paras 15, 19, 22 and 29 of the judgment in P.S. Sathappan's case (supra) herein:

"15. Faced with the situation it was submitted that the above observations have been made only in the context of Sections 47 and 48 of the Guardians and Wards Act. It was submitted that therefore these observations cannot be applied to a case where an appeal is u/s 104 itself. This argument overlooks sub-clause (1) of Section 104 CPC which now categorically saves appeals under any law for the time being in force. Thus if any other law for the time being in force permits an appeal the same would be maintainable irrespective of Section 104(2) CPC. As stated above, this would include a letters patent appeal. Also, the observations quoted above are not in the context of Sections 47 and 48 of the Guardians and Wards Act, but in the context of whether a letters patent appeal can be barred. That was the question before the Court. The Constitution Bench was considering whether a letters patent appeal was maintainable. It was then submitted that this authority does not take into consideration and does not refer to sub-clause (2) of Section 104. It was submitted that as sub-clause (2) of Section 104 was not considered a fresh look is required. Once it is noted that Section 104(1) saves such appeals there is no need to refer to or mention Section 104(2). Section 104(2) cannot lay down anything contrary to Section 104(1). To be remembered that legislature had now put in the saving clause in order to give effect to the Bombay, Madras and Calcutta views. If an interpretation, as sought to be given by Mr. Vaidyanathan, is accepted then there would be a conflict between sub-clause (1) and sub-clause (2) of Section 104. Sub-clause (1) would save/permit a letters patent appeal whereas sub-clause (2), on this interpretation, would bar it. In our view, there is no such conflict. As seen above, Section 104(1) specifically saves a letters patent appeal. Sub-clause (2) can thus only apply to such appeals as are not saved by sub-clause (1). In other words sub-clause (2) of Section 104 can have no application to appeals saved by Section 104(1). Also it is well established rule of interpretation that if one

interpretation leads to a conflict whereas another interpretation leads to a harmonious reading of the section, then an interpretation which leads to a harmonious reading must be adopted. In the guise of giving a purposive interpretation one cannot interpret a section in a manner which would lead to a conflict between two sub-sections of the same section. We clarify that, as stated above, there is no conflict, but if the interpretation, suggested by Mr. Vaidyanathan, were to be accepted then there would clearly be a conflict. The only way a conflict can be avoided is to hold that sub-clause (2) only bars such appeals as are not saved by sub-clause (1) of Section 104.

16 to 18

19. Much emphasis is sought to be put on the sentence, i.e. "once Section 104 applies and there is nothing in the Letters Patent to restrict the application of Section 104 to the effect that even if one appeal will lie to the Single Judge, no further appeal will lie to the Division Bench" and it is submitted that the Court was laying down that a further appeal will not lie even if Letters Patent permitted. The sentence cannot be read in isolation. It must be read in the context of all that is stated before it. It is already held that Section 104 read with Order 43 Rule 1 CPC confers additional powers of appeal to a larger Bench within the High Court. When read in context the sentence only means that in case of orders not covered by Letters Patent a further appeal will not lie. This is also clear from the subsequent sentence that there is nothing else in Letters Patent which permits a further appeal barred by Section 104(2) CPC. As set out above, Section 104(2) only bars appeals against order passed in appeal under the section. Thus Section 104(2) does not bar appeals permitted by any law in force. It is also to be noted that principle in *L. Ram Sarup Vs. Mt. Kaniz Ummehani*, , that Section 104 did not bar a letters patent appeal was specifically accepted. It Is also accepted that Letters Patent is a special law. However, on the wordings of the concerned Letters Patent as noticed, it was held that the Letters Patent did not permit a second appeal. Had the Letters Patent permitted a second appeal, on the ratio laid down earlier, a letters patent appeal would have been held to be maintainable. In our case it is an admitted position that the concerned Letters Patent permits an appeal.

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22. Thus the unanimous view of all courts till 1996 was that Section 104(1) CPC specifically saved letters patent appeals and the bar u/s 104(2) did not apply to letters patent appeals. The view has been that a letters patent appeal cannot be ousted by implication but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation. The express provision need not refer to or use the words "Letters Patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.

23 to 28

29. Thus, the consensus of judicial opinion has been that Section 104(1) CPC expressly saves a letters patent appeal. At this stage it would be appropriate to analyze Section 104 CPC. Sub-section (1) of Section 104 CPC provides for an appeal from the orders enumerated under sub-section (1) which contemplates an appeal from the orders enumerated therein, as also appeals expressly provided in the body of the Code or by any law for the time being in force. Sub-section (1) therefore contemplates three types of orders from which appeals are provided, namely,

- 1) orders enumerated in sub-section (1),
- 2) appeals otherwise expressly provided in the body of the Code, and
- 3) appeals provided by any law for the time being in force. It is not disputed that an appeal provided under the Letters Patent of the High Court is an appeal provided by a law for the time being in force."

7. Keeping in view the judgment (supra) read with the judgment made by the Full Bench of this Court in Jaswant Singh's case (supra), the right of Letters Patent Appeal is not taken away. However, the appeal(s) is/are to be determined on merits including as to whether the order(s) impugned in the said appeal(s) is/are appealable in view of the ratio and mandate of the said judgments.

8. Accordingly, the Registry is directed to list LPA No. 693 of 2011 on 15th September, 2014; OSA No. 12 of 2006 on 16th September, 2014; LPA No. 17 of 2006 on 17th September, 2014, LPAs No. 130 & 131 of 2008 on 22nd September, 2014; LPAs No. 34 & 180 of 2013 on 23rd September, 2014; and LPAs No. 85 & 139 of 2014 on 24th September, 2014, for hearing.