
(2002) 09 BOM CK 0075

In the Bombay High Court

Case No : Letters Patent Appeal No. 7 of 1996 and Cross Objection No. 6 of 1996

Shri Chandreshwar Bhuthanath Devastan of Paroda by its APPELLANT
Special Attorney Shri Madhukar Narayan Raut Dessai

Vs

Shri Subiraj Prabhakar Naik and Others RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4
Civil Procedure Code, 1908 (CPC) — Section 10, 100, 100A, 102, 3
Constitution of India, 1950 — Article 133, 134, 226, 227
General Clauses Act, 1897 — Section 13, 5, 6, 7

Citation : (2003) 105 BOMLR 915

Hon'ble Judges : S. Radhakrishnan, J; P.V. Hardas, J

Bench : Division Bench

Judgement

S. Radhakrishnan, J.—Heard the learned Counsel for the appellant and the respondents as well as the other learned Counsel in the above matter including the learned Advocate General to assist us on the issue as to whether Section 100A of the Code of Civil Procedure, 1908, which has been amended by the CPC (Amendment) Act, 2002 will be prospective in operation or retrospective in operation. The aforesaid Amendment was brought into force on 1st July, 2002.

2. The only issue which has been argued is whether any of the pending Letters Patent Appeals which have already been admitted by this Court are also covered by the said Section 100A as mentioned hereinabove, in the sense whether pending admitted Letters Patent Appeals survive in view of the aforesaid amendment or not.

3. To appreciate the contentions with regard to the above issue, it would be relevant to quote Section 100A of the Code of Civil Procedure, 1908 which for the first time by this CPC (Amendment) Act, 1976 by Section 38 was incorporated as under:-

Section 100A. No further appeal in certain cases.- Notwithstanding anything

contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal.

4. In the aforesaid CPC (Amendment) Act, 1976 by Section 97 there was repeal and savings which reads as under:-

Section 97. Repeal and savings.- (1) Any amendment made, or any provision inserted in the principal Act by State Legislature or a High Court before the commencement of this Act shall except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act. stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or the repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897).

(m) the provisions of Section 100 of the principal Act. as substituted by Section 37 of this Act, shall not, apply to or affect any appeal from an appellate decree or order which had been admitted before the commencement of the said Section 37 after hearing under Rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said Section 37 had not come into force.

(n) Section 100A, as inserted in the principal Act, by Section 38 of this Act, shall not apply to or affect any appeal against the decision of a Single Judge of a High Court under any Letters Patent which had been admitted before the commencement of the said Section 38 and every such admitted appeal shall be disposed of as if the said Section 38 had not come into force.

(3) Save as otherwise provided in Sub-section (2), the provisions of the principal Act as amended by this Act, shall apply to every suit, proceeding, appeal or application, pending at the commencement of this Act or instituted or filed after such commencement withstanding the fact that, the right, or cause of action, in pursuance of which such suit, proceeding, appeal or application is instituted or filed, had been acquired or had accrued before such commencement.

5. Subsequent thereto, there is a further amendment to the CPC by the CPC (Amendment) Act, 1999 whereby Section 100A was substituted which substituted Section 100A reads as under:-

100A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force.-

(a) where any appeal from an original or appellate decree or order is heard and decided.

(b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution.

by a Single Judge of High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge.

6. In the said Amendment Act, 1999, Section 32 provides for repeal and savings which reads as under as far as Section 100A of the CPC is concerned:-

Section 32. Repeal and savings.-

(1) Any amendment made or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed,

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897).

(g) the provisions of Section 100A of the principal Act, as substituted by Section 10 of this Act, shall nor apply to or affect any appeal against the decision of a Single Judge of a High Court under Article 226 or Article 227 of the Constitution which had been admitted before the commencement of Section 10; and every such admitted appeal shall be disposed of as if Section 10 had not come into force.

7. Finally now the CPC (Amendment) Act, 2002 was enacted and brought into force on 1st July, 2002 wherein Section 4 reads as under:

Section 4. Substitution of new Section for Section 100A.- For Section 100A of the principal Act (as substituted by Section 10 of the CPC (Amendment) Act, 1999 (46 of 1999), the following section shall be substituted, namely:-

100A. 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.

8. In the said CPC (Amendment) Act, 2002 there is a provision for repeal and savings. Section 16 provides for repeal and savings which reads as under:-

(1) Any amendment, made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of

the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897).

(a) the provisions of Section 102 of the principal Act as substituted by Section 5 of this Act, shall not apply to or affect, any appeal which had been admitted before the commencement of Section 6: and every such appeal shall be disposed of as if Section 5 had not come into force;

(b) the provisions of Rules. 15. 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be. inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 (46 of 1999) and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 and Section 7 of this Act:

(c) the provisions of Rule 1 of Order XX of the First Schedule as amended by Section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of Section 13 of this Act.

9. Shri S.G. Dessai, the learned Senior Counsel appearing on behalf of the respondents in the above appeal strongly submitted that, the aforesaid amendment which was brought into force on 1st July, 2002 in Section 100A by the Code of Civil Procedure, will be retrospective in operation inasmuch the necessary intendment in that behalf is quite apparent and clear. In that behalf the learned Counsel for the respondents submitted that the CPC itself is a procedural law and as far as the procedural law is concerned, the general principle is that any amendment thereto would have retrospective effect.

10. Mr. Dessai, the learned Counsel contended that the very wording in Section 100A with the heading that no further appeal lies in certain cases and also pointed out the non obstante clause therein is also pervasive in the sense that, notwithstanding anything contained in the Letters Patent for any High Court as well as notwithstanding anything contained in any other law for the time being in force or in any instrument having the force of law emphasised that the Parliament clearly intended that no further appeal should lie i.e. in the kinds of the cases mentioned in Section 100A that is an appeal from an original or appellate decree, order which was heard and decided by a Single Judge of the High Court. Mr. Dessai therefore emphasised that non obstante clause is very clear that the Parliament intended that even pending appeals should not be proceeded with. Therefore the learned Counsel contends that the words used "shall be" also include appeals which have been admitted and pending and which are yet to be disposed of.

11. The learned Counsel Mr. Dessai also laid emphasis that the necessary intendment of the Parliament, to have retrospective operation is explicit from Sub-section (2) of Section 16 of the Repeal and Savings Section in the CPC (Amendment) Act, 2002 wherein the learned Counsel pointed out that the Parliament has made it clear that without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897, only in three categories of the amendments namely amendments pertaining to Section 102, Rules 5, 15,

17 and 18 of Order VI of the First Schedule and Rule 1 of Order XX of the First Schedule of Code of Civil Procedure, the Parliament has expressly provided for saving as mentioned hereinabove, and in fact the amendments brought in were of a much wider nature, There were not less than ten other provisions wherein substantial amendments were made with regard to the same. In the aforesaid Section 16(2) wherein only three categories of cases have been expressly saved and others have not been saved. Therefore the learned Counsel for the respondents contends that the necessary intendment would be very clear from the above that there is no saving with regard to various amendments other than the above three mentioned hereinabove.

12. The learned Counsel for the respondents, contends that this is all the more apparent if one were to look at the repeal and savings clause pertaining to Amendment Act, 1976 wherein the Parliament thought it fit to expressly save as far as appeals u/s 100A were concerned which have already been admitted before the commencement of the said Section. Similarly the learned Counsel for the respondents also pointed out that in the Amendment Act of 1999 by Section 32 Clause (2)(g) there is a saving clause as far as appeals arising u/s 100A are concerned, but the same was restricted only to appeals arising out of Orders passed by a Single Judge of the High Court, in the matters pertaining to Articles 226 or 227 of the Constitution of India which have already been admitted. The learned Counsel pointed out that in the Amendment. Act, 1999 Section 100A prohibits two kinds of Appeals, one pertaining to an appeal from an original or appellate decree or order which is heard and decided by a Single Judge in an Appeal and the other category Appeals with regard to orders passed by a Single Judge of High Court arising out of any writ, direction or order issued or made under Articles 226 or 227 of the Constitution of India. The learned Counsel points out that, the Parliament had chosen to provide an express saving clause only with regard to admitted and pending Appeals arising out of Orders passed under Articles 226 or 227 of the Constitution of India by a Single Judge and there was no such protection or saving with regard to pending and admitted Appeals pertaining to any appeal from an original or appellate decree or order which was heard and decided by a Single Judge. Therefore, Mr. Dessai contends that the necessary intendment of the Parliament is very clear and they had sought to restrict the saving clause only with regard to three categories as mentioned in Section 16 of the CPC (Amendment) Act, 2002.

13. Shri Dessai, learned Counsel appearing for the respondents, therefore submitted that, even the Letters Patent. Appeal which have already been admitted and pending in this Court cannot survive in view of the amended Section 100A of the CPC which came into force on 1st. July, 2002. In that behalf. Shri Dessai, relied upon a recent, judgment of the Hon"ble Supreme Court in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, wherein he laid emphasis on the following observations in paragraph 38 which reads as under:-

The position is well-known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this Rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in Special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

14. The Hon'ble Supreme Court in unequivocal terms has held that while interpreting Section 6 of the General Clauses Act, that the pending proceedings depend on the savings as provided. It was also emphasised that in a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

15. Learned Counsel Shri Dessai relied on another well known judgment of the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . He laid emphasis on paragraph 23 of the said judgment which reads as under:

23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest, of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the Superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the

dale of the institution of the suit, or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

16. In the above, he laid stress with regard to Clause (v) hereinabove to contend any such vested right of appeal can always be taken away by a subsequent enactment, If it so provides expressly or by necessary intendment and not otherwise. The learned Counsel stressed the fact that in the instant case the necessary intendment is apparent and very clear. Hence the said vested right of appeal has been taken away by the aforesaid amendment by the necessary intendment.

17. Shri Dessai also referred to a judgment of the Supreme Court in the case of State of Punjab Vs. Mohar Singh, wherein in paragraph (8) The Supreme Court has interpreted the purport of Section 6 of the General Clauses Act which reads as under:-

...It seems that Section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, Section 6(e) of the General Clauses Act. is not applicable and we would have to fall back on the provisions of the new Act itself.

These observations could not undoubtedly rank higher than mere "obiter dictum" for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman, C.J., the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, Section 6 of the General Clauses Act will undoubtedly be attracted.

But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the

purpose of determining whether they indicate a different intention....

18. In the above judgment the Apex Court has emphasised that, when there is a repeal followed by a fresh legislation on the same subject one has to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

19. Shri Dessai thereafter referred to another judgment of the Supreme Court in *K. Kapen Chako Vs. The Provident Investment Company (P) Ltd.*, especially paragraph 37 which reads as under:-

A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not to be construed. It is a well-recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all. and from enactments merely affect procedure and do not extend to rights of action. See *Re : Joseph Such & Co. Ltd.* (1875) 1 Ch.D. 48. If the Legislature forms a new procedure alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it. will be held to apply *prima facie* to all actions, pending as well as future.

20. Shri Dessai also referred to another judgment of the Supreme Court in *Anant Gopal Sheorey Vs. The State of Bombay*, wherein in paragraph (4) the Supreme Court has observed as under:

The question that arises for decision is whether to a pending prosecution the provisions of the amended Code, have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right, of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. See *Maxwell on Interpretation of Statutes* on p. 225 *Colonial Sugar Refining Co. Ltd. v. Irving* 1905 A.C. 369. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective.

21. Learned Counsel Shri Dessai referred to another judgment of the Supreme Court in *T.S. Baliah Vs. T.S. Rengachari*, wherein also he laid emphasis that the Court has held that unless there is an express saving there will be a presumption that the Parliament had not intended to save such a pending proceeding. The learned Counsel relied on paragraph 5 which reads as under:

The principle of this section is that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal.

In other words, whenever there is a repeal of an enactment the consequences, laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says a different intention appears in the repealing statute. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But, when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material. In other words, the provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is a simultaneous re-enactment unless a contrary intention can be gathered from the new statute....

22. Shri Dessai therefore contended that if the Court looks to the provisions of the new Act, the Court has to see whether the new Act manifests an intention to destroy certain rights and not whether the Court should see the old rights and liabilities are kept alive. One has to see whether the new provisions destroys the existing right and not to find out whether the old rights are kept, alive by the new amendment. Therefore the learned Counsel submitted that to do away with Letters Patent Appeal if vested rights have been taken away which have been destroyed, the Court has to see the provisions in that context and not in the context to see that the rights of the appeal have been kept alive by such amendment. The Court has to see that the right has been destroyed or not. In the instant case such a right has been destroyed by Section 100A. Shri Dessai thereafter referred to another judgment of the Supreme Court in *Jayantilal Amrathlal Vs. The Union of India (UOI)*, wherein in paragraph 8 the Supreme Court has interpreted Section 6 of the General Clauses Act and wherein also it is emphasised that if one has to look to the provisions of the amended Act, for ascertaining whether there is a contrary intention. Paragraph 8 reads as under:-

The above contention is untenable. There are no provisions in the Gold (Control) Act, 1968 which are inconsistent with Rule 126(I)(10) of the "Rules". That being so, action taken under that rule must be deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. It is true that Gold (Control) Act, 1968 does not purport to incorporate into that Act the provisions of Section 6 of the General Clauses Act. But the provisions therein are not inconsistent with the

provisions in Section 6 of the General Clauses Act. Hence the provisions of Section 6 of the General Clauses Act are attracted in view of the repeal of the Gold (Control) Ordinance, 1968. As the Gold (Control) Act does not exhibit a different or contrary intention, proceedings initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, the "Rules" were deemed as an act of Parliament. Hence on the repeal of the "Rules" and the Gold (Control) Ordinance, 1968, the consequences mentioned in Section 6 of the General Clauses Act, follow. For ascertaining whether there is a contrary intention, one has to look to the provisions of the Gold (Control) Act, 1968. In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question.

23. Shri Dessai thereafter referred to another judgment of the Supreme Court in *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, . He referred to paragraphs 22, 23 and 24 and laid emphasis that the main object of the repeal or re-enactment is to obliterate and get rid of certain obsolete matters and emphasised that in the instant case Section 100A is to do away with Letters Patent Appeal in certain cases and there is no express saving with regard to the pending Letters Patent Appeal and the necessary intendment is to destroy such an appeal. The learned Counsel also referred to the judgment of the Supreme Court in *D.C. Bhatia and Others Vs. Union of India (UOI) and Another*, . It is for the Legislature to decide as to which class of persons should be given protection and on what basis. Shri Dessai thereafter referred to Black's Law Dictionary, Seventh Edition to show as to what accrued right means. "Accrued right" is a matured right; a right that is ripe for enforcement (as through litigation). He pointed out "procedural right" means a right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right. "Vested right" is a right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.

24. Shri Dessai therefore contended that in the light of the above judgments of the Supreme Court and also in view of the Amendment Act, 2002, and the saving clause of Amendment Act, 2002, the Parliament had intended to save only three categories and with regard to the rest of the categories Parliament has necessarily chosen not to provide any savings at all. He emphasised as pointed out hereinabove, especially the Amendment Act of 1976 pertaining to repeal and savings as well as the Amendment Act of 1999 pertaining to repeal and savings Parliament had chosen to save only certain categories and not others. On similar basis even in the Amendment Act of 2002 the Parliament had chosen to save only certain categories and not others. Therefore Vie contended that the

necessary intendment is very clear. Therefore he contends that such a vested right of appeal even in the pending and admitted Letters Patent Appeals have been taken away by the Amendment Act of 2002 whereby the said appeals cannot be entertained and heard after 1st July, 2002, as the necessary intendment is apparent and explicit.

25. The learned Advocate General strongly supported contentions of Shri Dessai, the learned Counsel for the Respondents. He contended that the right of Appeal is a creature of Statute and that the said right can be taken away by a subsequent enactment either expressly or by necessary intendment. The learned Advocate General emphasised the importance of "non obstante clause" in Section 100A, to indicate that even the pending admitted Letters Patent Appeals would not survive. In that context he pointed out the phrase "notwithstanding anything contained in" in contradiction to the phrase "subject to". The learned Advocate General also pointed out the difference in the language used in Section 100A and Section 102, to highlight his contention that even the pending admitted Letters Patent Appeals cannot continue. He also pointed out the statement, objects and reasons in the Amendment Act, 2002, the emphasis was to reduce the delay in the disposal of civil cases. He therefore contended that the necessary intendment was clear to do away with the pending admitted Letters Patent Appeals also, hence full effect to the said intention of the Parliament must be given.

26. Mr. Usgaonkar, the learned Senior Counsel appearing for the Appellant, on the contrary, strongly contended that this Amendment pertaining to Section 100A by the Amendment Act of 2002 will be only prospective in operation i.e. will be operative only from 1st July, 2002 and onwards. To put it in other words, Shri Usgaonkar contended that this Amendment will not affect the Letters Patent Appeals which have already been admitted by this Court and pending for final hearing. Mr. Usgaonkar laid great emphasis to contend that the right of appeal is a vested right and the said right can be taken away only expressly or by necessary intendment. In fact, he contended that the right of appeal accrues from the time the cause of action accrues in favour of a litigant and such a vested right to file an appeal cannot be taken away unless there is an express provision made by the Parliament or there is a clear necessary intendment. In fact, in that behalf Mr. Usgaonkar very strongly relied on the judgment of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, . In fact here also the learned Counsel referred to the very same paragraph 23 which has laid down various principles pertaining to the right of appeal. He also laid great stress that as the right of appeal is not a mere right of procedure but a vested substantive right and the same cannot be easily whittled down or taken away unless there is an express provision to that effect or necessary intendment which must be clear.

27. Mr. Usgaonkar thereafter referred to another judgment of the Supreme Court in The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc., where in paragraph 14, the Supreme Court has again referred to and

reiterated that such a right of appeal can be taken away only by an express provision or by necessary intendment.. Shri Usgaonkar thereafter referred to another Judgment of the Supreme Court in Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, . In the aforesaid judgment the Supreme Court was dealing with the issue of the CPC superseding the Portuguese Civil Procedure Code. In the said judgment, the Apex Court has held that by a new Act a new forum could be provided. Merely by providing a new forum, the vested right is not affected.

28. Shri Usgaonkar also laid emphasis on the judgment, of the Supreme Court in Jayantilal Amrathlal Vs. The Union of India (UOI), ,especially on paragraph 8 wherein the Supreme Court has even considered T.S. Baliah Vs. T.S. Rengachari, and has held in paragraph 8 as under:-

The above contention is untenable. There are no provisions in the Gold (Control) Act, 1968 which are inconsistent with Rule 126(1)(10) of the "Rules". That being so, action taken under that rule must be deemed to be continuing in view of Section 6 of the General Clauses Act. 1897. It is true that Gold (Control) Act, 1968 does not purport to incorporate into that Act the provisions of Section 6 of the General Clauses Act. But the provisions (herein are not inconsistent with the provisions in Section 6 of the General Clauses Act. Hence the provisions of Section 6 of the General Clauses Act are attracted in view of the repeal of the Gold (Control) Ordinance, 1968. As the Gold (Control) Act does not exhibit a different or contrary intention, proceedings initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, the "Rules" were deemed as an act of Parliament. Hence on the repeal of the "Rules" and the Gold (Control) Ordinance, 1968, the consequences mentioned in Section 6 of the General Clauses Act, follow. For ascertaining whether there is a contrary intention, one has to look to the provisions of the Gold (Control) Act, 1968. In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question see State of Punjab v. Mohar Singh and T.S. Baliah v. Income Tax Officer, Central Circle VI. Madras.

29. Shri Usgaonkar, the learned Counsel appearing for the appellant also referred to Section 16 of the CPC (Amendment) Act, 2002 which deals with repeal and savings. He pointed out that the aforesaid savings provides for three categories in a limited manner, whereas the said Clause (2) of Section 16 mentions clearly that without prejudice to the generality of the provisions of Section 6 of the General Clauses Act would necessarily mean that as far as sections which are not. mentioned in the said clause of Section 6 would operate in its entirety and with regard to Section 102 and provisions of Rules 5, 15, 17and 18 of Order VI

and the provisions of Rule 1 of Order XX of CPC were only saved to a limited extent. Shri Usgaonkar contends that with regard to other amended portions the moment the CPC (Amendment) Act, 2002 came into force on 1st July, 2002 wherein the aforesaid provisions of Section 6 of the General Clauses Act would come into full operation whereby all pending proceedings would be saved and protected and would be covered as if the new Amendment Act did not come into force, including the admitted Letters Patent Appeals. Shri Usgaonkar contends that as the right of appeal is a substantive right, and there is always a vested right in every litigant with regard to such an appeal, the Court should not interpret in a manner the Amendment so as not to deprive a litigant who has already exercised such vested right, in appeal unless the Parliament has expressly or by necessary intendment taken away the said right of appeal. Shri Usgaonkar therefore contends that in the said Amendment Act of 2002, there is no indication that Section 6 of the General Clauses Act has been made inapplicable by the Parliament with regard to other amended provisions, whereas all the pending proceedings ought to be governed by the existing law as if the said amendment, was not brought into force.

30. As far as the CPC (Amendment) Act, 1999 is concerned, the learned Counsel Mr. Usgaonkar contends that the said Act has been superseded by the Amendment Act of 2002. As such, one need not look at the same. The learned Counsel conceded that as far as CPC (Amendment) Act, 1976 is concerned the repeal and savings clause does contain provisions that the amendment shall not apply to such Appeals which have already been admitted. In other words, the learned Counsel contends that though in Amendment Act of 1976 there is a clear savings clause pertaining to Letters Patent Appeals which have already been admitted, that should not necessarily mean that the Amendment Act, 2002 be given an interpretation that the same would be retrospective in operation since there is no such express savings as in the Amendment Act of 1976.

31. Learned Counsel for the appellant fairly stated that by an express provision or by necessary intendment the Parliament can always take away such a vested right of appeal, but in the instant case there is no such express provision of taking away such a right, but one has to see whether there is a necessary intendment to take away such right of appeal. Shri Usgaonkar contends that the said repeal and savings clause of Amendment Act, 2002 is silent as far as the proceedings u/s 100A are concerned which means that automatically Section 6 of the General Clauses Act ought to be applied and the Parliament has applied Section 6 in a limited manner to those three provisions mentioned therein which necessarily does not mean that Section 7 would not apply to the pending admitted Letters Patent Appeals. Under these circumstances, the learned Counsel for the appellant strongly contended that such a vested right of appeal once having been exercised by the appellant and the appeal which has been admitted is pending in this Court, such a right is not to be taken away unless there is a clear intendment which has not been made out at all in the instant case. Hence he strongly contends that in CPC (Amendment) Act, 2002 as far as Section 100A

is concerned, the same would have prospective operation i.e. would be effective only from 1st July, 2002 and the same would have no application prior to 1st July, 2002 and the pending Letters Patent Appeals should be allowed to continue and be heard on merits.

32. Shri Usgaonkar, learned Senior Counsel appearing for the appellant, contended that there is always a presumption that right of appeal accrued in favour of the parties is not taken away in view of Section 6 of the General Clauses Act. He also contended that the right to file an appeal is also substantive right and the same is vested in a litigant right from the date the cause of action arises and he files the suit and the same continues till the final decision in the said suit.

33. Shri Usgaonkar also pointed out that in Section 6 of the General Clauses Act the emphasis is that unless a different intention appears, the general rule in pending appeals or legal proceedings is that they should be continued as if the amendment had not taken place. The learned Counsel contended that Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, will not be attracted in the present case, as the present case is not a case of omission but is an express case of substitution. Mr. Usgaonkar, the learned Senior Advocate for Appellants, also relied upon a Division Bench judgment in Chuluram Vs. Bhagatram, to contend that there is a strong presumption with regard to a vested right of appeal in pending proceedings is not impaired by a change in law relating to appeals. Mr. Usgaonkar thereafter referred to and relied upon Laxmichand v. Mitthu AIR 1984 SC 112 to contend that it is well settled that the right of appeal accrues to the parties to the suit on the date of the institution of the suit according to the law then in force and, therefore, there is a presumption that a subsequent change in law restricting the grounds of appeal will not apply to appeals arising from the suits instituted earlier.

34. Shri Kakodkar, the learned Senior Counsel appearing in some other pending and admitted Letters Patent Appeal also strongly supported the submissions of Shri Usgaonkar, and contended that the aforesaid amendment which was brought into force on 1st July, 2002 can only have prospective operation and cannot have retrospective operation. He also emphasised that as far as the CPC (Amendment) Act, 1999 is concerned, the same was actually wiped out through assented by the President earlier since Section 4 of the C.P.C. (Amendment) Act, 2002 was published by Notification on 23rd May, 2002 and finally the said C.P.C. (Amendment) Act, 2002 was brought into force on 1st July, 2002. To put it in other words, Shri Kakodkar contends that the C.P.C. Amendment Act, 1999 was never brought into force in the sense even before the same could be brought into force on 1st July, 2002 the same was wiped away by C.P.C. (Amendment) Act, 2002 on 23rd May, 2002 and finally the said C.P.C. (Amendment) Act, 2002 was brought into force on 1st July, 2002.

35. Shri Kakodkar also laid emphasis that the saving clause in Section 16 of the C.P.C. (Amendment) Act. 2002 provides for a limited saving as far as three

categories are concerned as mentioned in Sub-clause (2) of Section 16, whereas with regard to all other amended provisions it should be construed as that Section 6 of the General Clauses Act would apply and therefore pending admitted Letters Patent Appeals would survive.

36. Shri Kakodkar also relied on a judgment of the Supreme Court in R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), . In the said judgment the Supreme Court was dealing with Benami Transaction (Prohibition) Act, 1988. By the said Act certain provisions whereby rights conferred were taken up. In that context the Supreme Court was interpreting Section 4(1) of the Benami Transaction (Prohibition) Act, 1988 which section itself clearly states that from a particular date there was a prohibition with regard to recovery of property held in benami. Under those circumstances, the Hon''ble Supreme Court has clearly held that as there were proceedings pending under the right conferred under the Indian Trusts Act and also appeals, hence those pending proceedings cannot be compared with a suit u/s 4(1) seeking an analogy from the above judgment. Shri Kakodkar relying on the above judgments contended that, where the appeals have been admitted and pending in this Court by way of Letters Patent Appeals the same cannot be dismissed on the ground of CPC (Amendment) Act, 2002;

37. Shri Kakodkar therefore contends that there is no express taking away of such substantive right of appeal and also there is necessary intendment of taking away the right to appeal. Hence the pending admitted Letters Patent Appeal continue and will be governed by the CPC as if the said Amendment Act of 2002 had not come into play.

38. After having considered all the aforesaid submissions and the exhaustive case law cited we gave a deep thought and consideration as to whether the present CPC (Amendment) Act of 2002 especially pertaining to Section 100A would apply or not to the pending admitted Letters Patent Appeal.

39. We are clearly of the view that the said Section 4 of the CPC (Amendment) Act, 2002 which substitutes by way of new Section 100A which was brought into force on 1st July. 2002 will have retrospective effect as the necessary intendment in that behalf is explicit and apparent for the following reasons.

40. All the learned Counsel agree that the right of appeal is a substantive and vested right and there is no quarrel to this proposition. Similarly all the learned Counsel agree that such a substantive vested right of appeal can be also taken away by the Legislature either expressly or by necessary intendment. Therefore what one has to see in the present case is whether there is an express taking away of such vested substantive right of appeal or there is a necessary intendment to take away such a vested substantive right of appeal.

41. As pointed out hereinabove rightly by learned Counsel Shri Desai for the respondents. Section 100A very clearly contemplates doing away with Letters Patent Appeal pertaining to an order passed by the learned Single Judge of the

High Court in appeal from an original or appellate decree or order. Therefore in clear terms the Parliament by substituting Section 100A by the aforesaid Amendment Act of 2002 has destroyed the substantive right of appeal by way of Letters Patent Appeal pertaining to original or appellate decree or order passed by a Single Judge in appeal by the High Court. To put it in other words, the amendment in no uncertain terms seeks to destroy such a substantive right of Letters Patent Appeal before a Division Bench in the matters spelt out therein. The Parliament also chooses to provide Section 16 which deals with repeal and savings. Here there is a clause in Section 16-clause (2) wherein the Parliament has made it expressly clear that only three categories are mentioned therein pertaining to Section 102, Rules, 15, 17 and 18 of Order VI and Rule 1 of Order XX of the CPC to a certain extent there is saving as contemplated u/s 6 of the General Clauses Act, 1897 would apply, and for the other ten amended provisions there are no such savings.

42. If one were to look at what had transpired in the CPC (Amendment) Act, 1976 wherein no uncertain terms in Section 97 of the said Amendment Act of 1976, provides in Clause (2)(n) as under:-

Section 100A, as inserted in the principal Act, by Section 38 of this Act, shall not apply to or affect any appeal against the decision of a Single Judge of a High Court under any Letters Patent which had been admitted before the commencement of the said Section 38 and every such admitted appeal shall be disposed of as if the said Section 38 had not come into force.

43. Similarly if one were to look at the CPC (Amendment) Act, 1999 Section 32 provides for repeal and savings and in Clause (2)(g) only a limited category is saved i.e. only Letters Patent Appeals arising out of decision of a Single Judge pertaining to an order arising under Article 226 or 227 of the Constitution was allowed to be continued as if the above Amendment had not come into force. If one were to look at Section 100A of the C.P.C. (Amendment) Act, 1999 as amended, contemplates two categories, the first category being an appeal from an original or an appellate decree or order heard and decided by a Single Judge of the High Court and the second category is an order passed by the Single Judge arising under Article 226 or 227 of the Constitution of India. The Parliament even at that time chooses only to protect the Letters Patent Appeals which were admitted and pending pertaining to and arising out of orders under Article 226 or 227 of the Constitution and not the other category at all. Therefore in the present CPC (Amendment) Act, 2002 the Parliament again only chooses to protect only three categories mentioned in Section Clause (2) and not other categories at all.

44. At it has been pointed by the Supreme Court in various judgments, the main thing what the Court has to see this interpreting as to what the new law seeks to destroy and not what the new law seeks to save. If one were to look at the newly amended Section 100A to the Amendment Act, 2002 the said provisions clearly bars Letters Patent Appeal with regard to any original or appellate decree or

order which is heard in appeal by a Single Judge of the High Court. To put it in other words in such cases the Parliament is of the clear view that no Letters Patent Appeal should lie. Such a vested right has been destroyed by such an amendment.

45. Especially in the context of Section 97 dealing with repeal and savings of CPC Code (Amendment) Act, 1976 wherein specific saving is pertaining to Section 3 u/s 100A a limited saving pertaining to pending admitted Letters Patent Appeals. Whereas in the present Amendment Act, 2002 savings clause in Section 16, the savings are only covered to affect in a limited manner. Therefore the necessary intentment is not to save and to destroy such a right of appeal is explicit from the above.

46. We are summarising our reasonings as follows for our conclusion that the aforesaid C.P.C. (Amendment) Act, 2002, pertaining to Section 100A will have retrospective effect:-

(a) Substantive vested right of Appeal against an order of a Single Judge of the High Court in appeal against an original or appellate decree or order, has been destroyed by the above amendment.

(b) In Section 16 of the above Amendment Act, 2002, only three types of matters have been saved, whereas the amendment dealt with thirteen types of matters.

(c) Section 97, Clause 2(n) of the C.P.C. Amendment Act, 1976 expressly saved admitted and pending Letters Patent Appeals, but in the Amendment Act, 2002 such a saving has not been provided at all.

(d) CPC (Amendment) Act, 1999 in Section 32, Clause 2(g) only Letters Patent Appeals arising out of a decision of Single Judge pertaining to an order arising out of Article 226 or 227 of the Constitution of India have been saved and consciously the Parliament has omitted the other categories of pending admitted Letters Patent Appeals, from such saving.

(e) The logic of doing away with such a right of Letters Patent Appeal appears to be that when a Single Judge of the High Court considers the entire matter in an appellate jurisdiction, hence there is no further need of an intra-Court appeal.

47. Under these circumstances, we are clearly of the view that the aforesaid CPC (Amendment) Act, 2002 especially pertaining to Section 100A by way of Section 4 substituted and brought into force with effect from 1st July, 2002 will apply retrospectively to Letters Patent Appeals which have been filed and admitted and pending for final disposal, in this Court.

48. After the above Judgment and Order was delivered, learned Senior Counsel appearing for the appellant Shri Usgaonkar prayed that the above issue involves a substantial question of law of general importance. Hence sought a certificate from this Court under Article 134 read with Article 133 of the Constitution of

India.

49. We do hereby grant such a Certificate as prayed hereinabove.

50. Issuance of certified copy is expedited.