A MUNICIPAL CORPORATION OF BRIHANMUMBAI AND ANR.

v.

STATE BANK OF INDIA

DECEMBER 2, 1998

B [DR. A.S. ANAND, CJ., B.N. KIRPAL AND V.N. KHARE, JJ.]

Bombay Municipal Corporation Act, 1888: Sections 217(1) and 218D—Scope of.

C *Code of Civil Procedure 1908: Section 100-A (As introduced by Amendment Act 1976)—Object and scope of.*

Letters Patent Appeal—Appeal against the decision of a single judge of High Court in second appeal—Permissibility of—Position before and after insertion of section 100-A in Code of Civil Procedure.

D

Appeal preferred by respondent before Additional Chief Judge of Small Causes Court under section 217 of the Bombay Municipal Corporation Act—Order passed in—Second appeal filed in High Court under section 218 D(1) by respondent—Second appeal partly allowed by a single Judge of the High Court—Letters Patent appeal filed by appellant against order of Single E *Judge—Dismissed by High Court as non maintainable—Appeal preferred before this Court—Held jurisdiction exercised by the Chief Judge of Small Causes Court under section 217(1) is appellate jurisdiction—The proceedings under section 217(1) are appellate proceedings in a second forum and not original proceedings in a first forum—The appeal filed by the respondent* F *under Section 218D of the Act was a second appeal against the appellate order made by the Additional Chief Judge, Small Causes Court—Since an appeal under Section 217(1) of the Act is a first appeal in a second forum/court and an appeal under Section 218D of the Act is the second appeal in the third forum/court, no further appeal would be competent before the fourth forum/court in view of Section 100A of the Code of Civil Procedure—The* G *view taken by the Division Bench of the High Court under the circumstances suffers from no error.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6060 of 1998.

H From the Judgment and Order dated 13.1.98 of the Bombay High Court

in L.P.A. No. 191 of 1997. A

Bhimrao N. Naik, Pallav Sisodia, (D.N. Mishra,) for Manik Karanjawala for the Appellants.

Rafique Dada, Chirag Balsara, Jaideep Verma, R.N. Karanjawala, Mrs. Nandini Gore, Ms. Yasmin Godrej and Mrs. Manik Karanjawala for the B Respondent.

The following Order of the Court was delivered :

Leave granted.

C

This appeal by special leave calls in question an order of the Division Bench of the High Court of Bombay Dated 13th January, 1998 dismissing the Letters patent Appeal on the ground that the same was not maintainable. A brief reference to the facts, at this stage, would be apposite.

The respondent herein had preferred an appeal before the Additional D Chief Judge of Small Causes Court under Section 217 of the Bombay Municipal Corporation Act. The learned Additional Chief Judge of the Small Causes Court decided the appeal vide order dated 8th February, 1996.

Aggrieved by the order passed by the learned Additional Chief Judge, E Small Causes Court dated 8th February, 1996, the respondent filed a second appeal in the High Court under Section 218-D(1) of the Act. The learned single Judge of the Bombay High Court on 31-1-1997 allowed that appeal partly. The appellant questioned the order of the learned single Judge dated 31st of January, 1997 through a Letters Patent Appeal. An objection was raised before the Division Bench of the High Court regarding the maintainability F of the Letters Patent Appeal on the ground that against an order of dismissal of the second appeal by the High Court, no further appeal could lie either under Letters Patent or any other law. Reliance was also placed on Section 100-A of the Code of Civil Procedure. The objection found favour with the learned Division Bench and without going into the merits of the order of the G learned single Judge, the Letters Patent Appeal was dismissed as not maintainable.

We have heard Mr. Bhimrao N. Naik, learned senior counsel appearing for the appellants and Mrs. Refique Dada, learned senior counsel appearing for the respondent. H

A The Bombay Municipal Corporation Act, 1888 is a complete Code and contains provision for filing appeal etc. against order made under the Act. Section 217(1) of the Act provides :

> "217(1) Subject to the provisions hereinafter contained, *appeals* against any rateable value or tax fixed or charged under this Act shall be
B heard and determined by the Chief Judge of the Small Causes Court.

A bare reading of Section 217(1) of the Bombay Municipal Corporation Act, 1888 shows that the jurisdiction exercised by the Chief Judge of the Small Causes Court is *appellate* jurisdiction.

C Section 218 provides for the period when the cause of complaint can be said to have accrued for filing of an appeal under Section 217 of the Act. It is, therefore, futile to contend that the proceedings under Section 217(1) are "original proceedings" in the first forum. The proceedings are *appellate* proceedings in a second forum and not original proceedings in a first forum.

D Against the appellate order of the learned Chief Judge of the Small Causes Court, an appeal is provided to the High Court under Section 218 D. Section 218 D provides :

> "Section 218 D. (1) An appeal shall lie to the High Court
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> (a) from any decision of the Chief Judge of the Small Cause Court in an appeal under Section 217 by which a rateable value in excess of two thousand rupees is fixed, and
>
> (b) from any other decision of the said Chief Judge in an appeal
F under the said section, upon a question of law or usage having the force of law or the construction of a document.
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> (2) The provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall so far as, they can be made applicable, apply to appeals under sub-section (1) and orders
G passed therein by the High Court may on application to the said Chief Judge be executed by him as if they were decrees made by himself.
>
> Provided that no such appeal shall be heard by the High Court unless it is filed within one month from the date of the decision of the
H Chief Judge."

Thus, according to Section 218 D, an appeal shall also lie to the High Court from *any* decision of the Chief Judge of the Small Causes Court *in an appeal under Section 217,* 'upon a question of law or usage having the force of law or the construction of a document'. That the respondent had taken recourse to Section 218 D(1) in filing an appeal against the appellate order of the learned Additional Chief Judge of the Small Causes Court is not in dispute. The appellant has not questioned the maintainability of the appeal filed by the respondent under Section 218 D of the Act before the learned single Judge of the High Court before us. Thus, it is obvious that the appeal filed by the respondent under Section 218 D of the Act was a *second appeal against the appellate order made by the Addl. Chief Judge, Small Causes Court.* Under the Bombay Municipal Corporation Act, no further appeal has been provided against the judgment of a learned Single Judge of the High Court deciding the second appeal under Section 218 D of the Act against an appellate order of the Chief Judge of the Small Causes Court passed under Section 217(1) of the Act. Section 100A of the Code of Civil Procedure, which was introduced by the Amendment Act, 1976 specifically bars any further appeal in such cases. That Section reads :

> "100 A. 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."

This section has been introduced to minimise the delay in the finality of a decision. Prior to the enactment of the above provision, under the Letters Patent, an appeal against the decision of a single Judge in a second appeal was, in certain cases, held competent, though under Section 100 of the Code of Civil Procedure there was some inhibition against interference with the findings of fact. The right of taking recourse to such an appeal has now been taken away by Section 100A of the Code of Civil Procedure (supra). Since, an appeal under Section 217(1) of the Act is a *first appeal in a second forum/court* and an appeal under Section 218D of the Act is the *second appeal in the third forum/court,* no further appeal would be competent *before the fourth forum/court* in view of Section 100A of Code of Civil Procedure (supra).

In the instant case, since an appeal from the appellate order was heard and decided by a learned single Judge of the High Court, no further appeal

A was maintainable from the judgment and order of the learned single Judge passed in that appeal. The view taken by the Division Bench of the High Court under the circumstances suffers from no error. This appeal has no merits and it is dismissed as such. No costs.

Learned counsel appearing for the appellants at this stage, submitted B that the appellants could challenge the order of the learned single Judge against which the Letters Patent has been held to be not maintainable directly under Article 136 of the Constitution. It shall be open to the appellants to take recourse to such other proceedings as may be available to them in law to challenge that order but we express no opinion on that question or on the C merits of the order of the learned single Judge, since in this appeal that order has not been put in issue.

T.N.A. Appeal dismissed.