

Appendix A

The Delhi High Court Act, 1966

(Act No. 26 of 1966)

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An act to provide for the constitution of a High Court for the Union territory of Delhi, for the extension of the Jurisdiction of that High Court of the Union territory of Himachal Pradesh and for matters connected therewith.

Be it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:

1. Short title and commencement—(This Act may be called the Delhi High Court Act, 1966.)

(2) Section 17 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions of this Act shall come into force at once.

2. Definitions—In this Act, unless the context otherwise requires—

(a) “appointed day means the date appointed under Section 3.

(b) “notified order” means order notified in the Official Gazette.

3. High Court—(1) As from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a High Court for the Union territory of Delhi (hereinafter referred to as the High Court of Delhi).

(2) This principal seat of the High Court of Delhi shall be at Delhi or at such other place as the President may, by notified order, appoint.

(3) Notwithstanding anything contained in sub-section (2), the Judges and Division Courts of the High Court of Delhi may sit at such other place or places other than its principals seat as the Chief Justice may, with the approval of the President, appoint.

^{1[1]}**3A. Salaries and allowances of Judges to be expenditure charged on Consolidated Fund of India**—Expenditure in respect of the salaries and allowances of Judges of the High Court of Delhi shall be expenditure charged on the Consolidated Fund of India.]

4. Exceptions and Modifications subject to which the provisions of Chapter V of Part VI of the Constitution apply to the High Court of Delhi—The provisions of Chapter V of Part VI of the Constitution shall, in their application to the High Court of Delhi, have effect subject to the following exceptions and modifications, namely:

(a) in Article 217, the words “the Governor of the State” shall be omitted and in relation to appointments to be made under sub-section (2), that article shall be construed as if the words, “and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court,” had also been omitted;

(b) in Article 219, the reference to the Governor of the State, and in the proviso to clause (3) of Article 227, reference to the Governor, shall be construed as a reference to the administrator of the Union territory of Delhi.

(c) the provisions of Article 225 shall not apply:

(d) in Article 229—

(i) the references to the Governor of the State shall be construed as references to the administrator of the Union territory of Delhi;

(ii) the references to the State Public Service Commission, the Legislature of the State and the Consolidated Fund of the State shall be construed, respectively, as references to the Union Public Service Commission, Parliament and the Consolidated Fund of India :

(e) the provisions of Article 230 shall apply subject to the modifications that—

^{1[1]}. Added by Act 37 of 1969, Section 2, w.e.f. 1-10-1969.

(i) in clause (1) thereof, for the words “High Court” in both the places where they occur, the words “High Court for a Union territory” and for the words “any Union territory”, the words “any other Union territory” shall be substituted;

(ii) for clause (2) thereof, the following clause shall be substituted, namely:

“(5) Where the High Court for a Union territory exercises jurisdiction in relation to another Union territory, the reference in Article 227 to the administrator of the Union territory of Delhi shall, in relation to any rules, forms or tables for subordinate Courts in that order Union territory, be construed as a reference to the administrator of that order Union territory.”

(2) Between the coming into force of this Section and the appointed day, the President may, after consultation with the Chief Justice of India, appoint the Chief Justice, of the High Court of Delhi and as many other Judges of the said Court as he thinks fit, and any appointments so made shall take effect as from the appointed day.

5. Jurisdiction of High Court of Delhi—(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the territories by the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds ^{2[2]}[rupees five lakhs.]

COMMENTS

Constitutionality of Statute.—In a suit pending before the High Court (original side) if a question may arise as to the invalidity or vires of regulation it can be heard and decided though a suit or proceeding specifically seeking adjudication of ultra vires and striking down of such regulation. *Indian Council of Agricultural Research v. Veterinary Council of India*, 1996 (63) DLT 786 : 1996 (38) DRJ 555.

Section 113 of CPC contemplates a case pending before any court and involving a question as to the validity of any act, ordinance and regulation or any provision contained therein, the determination of which is necessary for the disposal of the case. If the court is of the opinion that it is invalid and inoperative but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case, setting out its opinion and the reasons thereof and refer the same for the opinion of the High Court. Such a question may arise by way of an issue in any suit and it is not necessary that a suit must have been filed specifically seeking relief of declaration of its nullity or of its being struck down. *Indian Council of Agricultural Research v. Veterinary Council of India*, 1996 (63) DLT 786 : 1996 (38) DRJ 555.

Jurisdiction—The jurisdiction of the High Court is same as exercisable in the Punjab High Court in Delhi before the constitution of Delhi High Court except as provided in Section 5(2) of Delhi High. Court Act, 1966. The High Court of Punjab under High Court (Punjab) Order 1947, has the same jurisdiction as exercised by the High Court at Lahore. There is no clause in the Letters Patent of Lahore High Court similar to Cl. 12 of the Letters Patent of Calcutta, Madras and Bombay High Courts. *R.P. Sachdeva v. The State*, AIR 1986 Delhi 178.

Full effect has to be given to the language employed to sub-section (2) of Section 5 “notwithstanding anything contained in any law for the time being in force” and that can be done only by saying that for purposes of Section 92 of the Code, the Court of the District Judge Delhi, will be the principal Civil Court of original jurisdiction in every suit the value of which does not exceed fifty thousand rupees (now twenty lakhs rupees) but in other suits the value of which exceeds the above amount, this High Court will be the principal Civil Court of original jurisdiction. It cannot be disputed that if original jurisdiction had been completely taken away from the Court of the District Judge, Delhi and conferred upon this High Court, then notwithstanding Section 24 of the Punjab Courts Act, the High Court will be the principal Civil Court of original jurisdiction irrespective of the valuation of the suit as in the case what are called the Presidency Courts. *Bakshi Lochan Singh v. Jalliedar Santokh Singh*, AIR 1977 Delhi 277.

Pecuniary jurisdiction – Arbitrary and whimsical valuation – A peculiar situation has arisen in Delhi as most of the High Courts in the country do not have Original Side Jurisdiction. The suit in relation to infringement, passing off etc, is filed for obtaining perpetual injunction. Suit has to be filed before the District Judge but to bring this suit to be maintained in this Court, relief for rendition of account is added wherein relief for rendition of account is valued at Rs. 200/- and for the purpose of jurisdiction the relief is valued at more than 5 lakhs rupees, whose exercise is for maintaining the suit in this Court and that is why figure of jurisdictional value is fixed over Rs. 5 lakhs so as to bring the suit within the pecuniary jurisdiction of the Original side of the Delhi High Court. There is neither any nexus nor rational or objectivity and not even a whisper in the plaint as on what basis the approximation value of jurisdiction has been arrived at by the plaintiff at Rs. 5,50,000/-. Least a plaintiff, if he feels and takes advantage of the settled proposition of law to value the suit for the purpose of jurisdiction differently than for the purpose of relief, ought to have given some reasons in the plaint, which I find totally missing in the case before hand. This fixation of valuation is demonstrably arbitrary, given to oust the jurisdiction of the Court of the first instance, i.e. the Court of the District Judge. Relief of rendition of account is sought in this suit, which is essentially a suit for injunction and to maintain this suit in this Court in paragraph 23(c) an averment has been made that for the purpose of jurisdiction, the value is fixed at Rs. 5,50,000/-. The foundation of suit emanates from the breach of legal obligation regarding copyright, trade mark and passing off, where the first and foremost relief is the relief of injunction. The relief for rendition of account is only to bring the suit within the ambit of section 9 of the Suits Valuation Act, Court Fee Act, read with Rules 3 & 4 of the Punjab & Haryana High Court Rules. The valuation in this suit over Rs. 5 lakhs is arbitrary and whimsical.

When there are two forums available to the plaintiff, the plaintiff has to file the suit at the Court of the lowest grade. The reasoning of section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it, is intended for the protection of the Courts of higher grade from over-burdening. The suit like the one before me has been filed by fixing a whimsical and arbitrary valuation with no material whatsoever. Thousands of suits are pending on the Original Side of the High Court. Litigants are waiting for more than 20 years for their substantive suits to be heard and rights determined but on account of three lines in the plaint all these helpless litigants, having paid Court fee, are sidelined to decide an interlocutory application. This is not what the rule of law is meant for. Unnecessarily overburdening the Court system when there is efficacious machinery available, the ingenuity making averment in the plaint regarding fixation of the valuation for the purpose of jurisdiction, in my opinion, will invest this Court with the jurisdiction to try the suit. For the reasons stated above the plaint is returned with a direction that the same may be filed in the Court of District Judge having jurisdiction to deal with the matter. *Wockhardt Veterinary Ltd. v. Raj Medicos*, 1998 (6) AD Delhi : 1998 RLR 353.

Pecuniary jurisdiction – Value fixed by petitioner when not inflated – The respondent was required to pay only a sum of 2,99,950/- by way of application fee for 49,900 shares and the jurisdiction value of the petition cannot, therefore, be more than Rs. 2,99,500/- and as such this Court will have no pecuniary jurisdiction. In my opinion once the respondent has undertaken to subscribe 49,900 equity shares of Rs. 10/- each of the obligation of the respondent is for the payment of the value of these shares, which comes to Rs. 4,99,000. The petitioner has also claimed interest on this amount at the rate of 18% per annum and the jurisdiction value has, therefore,

^{2[2]}. Substituted for the words “rupees five lakhs” by Central Act No. 35 of 2003 w.e.f. 16.7.2003.

been mentioned in the petition as Rs. 7,73,637/- which includes interest on the amount allegedly due from the respondent. In my view there cannot be any objection to this jurisdiction value fixed by the petitioner as the same is neither arbitrary nor inflated. As the value of the petition for purposes of the jurisdiction is more than Rs. 5 lacs, this Court has pecuniary jurisdiction to try the petition. *Pasupati Fabrics Limited v. Savani Financial Limited*, 2001 (3) RAJ 167.

Power to amend pecuniary limit – For Union Territories, by virtue of Art. 241 of the Constitution, the Parliament alone has power to constitute a High Court for all or any of the purposes of the Constitution. This power includes power of defining, enlarging, altering, amending and diminishing the territorial and pecuniary power. Delhi High Court Amendment Act, 2001 passed by Legislative Assembly of Delhi to amend the Delhi High Court Act 1966 and Punjab Courts Act 1918, whereby raising the pecuniary limit of Delhi High Court from 5 lakh to 20 lakh held ultra vires of Constitution. Legislative Assembly of Delhi was not competent to pass impugned legislation. *Geetika Panwar v. Govt. of NCT of Delhi*, 2002 (64) DRJ 588 : 2002 (99) DLT 840. *Delhi High Court Bar Association & Another v. Govt. of NCT of Delhi*, 2002 (64) DRJ 588 : 2002 (99) DLT 840.

Scope of appeal – In view of the special position of Delhi, where the ordinary original civil jurisdiction previously exercised by subordinate Courts has been brought within the ordinary civil jurisdiction of the High Court (with reference to suits of certain pecuniary value) only orders from which appeals lay under Order 43(1) of the Code from decisions made by Civil Courts would be appealable even where a single Judge of this court passed such orders in the exercise of ordinary civil jurisdiction. *Gokulchand D. Morarka v. Company Law Board*, (1974) 44 Co. Cases 173 (Delhi).

When a judgment is delivered by a Single Judge exercising the jurisdiction inherited from the Punjab High Court under Section 5(1) of the Act, then the appeal against it lies under Cl. X of the Letters Patent. On the other hand, when a learned Single Judge delivers a judgment in exercise of the ordinary original civil jurisdiction from the subordinate Courts under Section 5(2) of the Act then appeal lies under Section 10(1) of the Act. *The Public Trustee v. Sh. Rajeshwar Tyagi*, 1971 DLT 252. (see also *Smt. Shanta Sabharwal v. Smt. Sushila Sabharwal*, AIR 1979 Delhi 153.)

Testamentary and intestate jurisdiction – The contention that by virtue of the provision (Section 5(2)) this High Court has become the principal Court of original civil jurisdiction with respect to all matters of the said value including matters in which the testamentary and intestate jurisdiction is invoked, so as to divest the District Judge of the jurisdiction to deal with such matters ignores the limited purpose for which sub-section (2) confers jurisdiction and impliedly ousts the corresponding jurisdiction of the District Judge. The ordinary original civil jurisdiction has relation to every suit. This obviously leaves jurisdiction other than that exercisable in a suit such as testamentary and intestate jurisdiction as indeed other jurisdiction unaffected. *R.S. Sachdeva v. The State*, AIR 1986 Delhi 178.

6. Power to enrol legal practitioners etc. – (1) The High Court of Delhi shall have like powers to approve, admit, enrol, remove and suspend legal practitioners, and to make rules with respect to them, as are, under the law in force immediately before the appointed day, exercisable by the High Court of Punjab.

(2) The right of audience in the High Court of Delhi shall be regulated in accordance with the like principles, as, immediately before the appointed day, are in force with respect of the right of audience in the High Court of Punjab :

Provided that subject to any rule made or direction given by the High Court of Delhi in the exercise of the powers conferred by this section, any person who immediately before the appointed day is an advocate entitled to practise or an attorney entitled to act in the High Court of Punjab shall be recognised as an advocate or an attorney entitled to practise or act, as the case may be, in the High Court of Delhi.

7. Practice and Procedure in the High Court of Delhi – Subject to the provisions of the Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Delhi and accordingly the High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction:

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, until varied or revoked by rules or orders made by the High Court of Delhi, apply with the necessary modifications in relation to practice and procedure in the High Court of Delhi as if made by that High Court.

COMMENTS

Practice & procedure are said to relate to the legal rules directing the manner of bringing the parties into Court, and the method of the Court after they are brought in, hearing, dealing with, and disposing of, matters in disputes between them. In *Tata Oil Mills v. Hansa Pharmacy*, ILR 1979 (2) Delhi 236, procedure was held to signify the mode in which the successive steps in litigation are taken. Thus "Practice & procedure" as occurring in section 7 of Delhi High Court Act appear to speak of the rules of Practice and procedure applicable to the Delhi High Court on its judicial side only *Suraj Bhan v. Rajinder Pal Singh Lamba*, 2001 (91) DLT 702.

This section, on its plain reading does not seem to contemplate the negative by excluding the applicability of the law in force immediately before the appointed day with respect to practice and procedure in the Courts of the District Judges and Subordinate Judges of the First Class in the Union Territory of Delhi. The Parliament, did not intend by enacting Section 7 that Rule 1 of Order 37, as indisputably applicable in express terms to the subordinate Courts in Delhi, would cease to apply to them with effect from the appointed day. The Courts of the District Judges and Subordinate Judges of the First Class having been expressly included in the amendment made by the Punjab High Court in Rule 1 of Order 37, nothing contained in Sections 121 and 127 CPC, would automatically repeal this part of Rule 1 or render this part of the amendment ineffectual or inoperative with effect from the appointed day. *Radhey Shyam Sawhney v. Bawa Joginder Singh Bhalla*, AIR 1969 Delhi 142.

Practice in its larger sense denotes the mode of proceeding by which a legal right is enforced, distinguished from the law which gives or defines the right and which by means of the proceedings the Court is to administer. *Poyser v. Minors*, (1881) 7 QBD 329.

Practice means the same things as procedure and denotes rules that make or guide *cursus curiae* and regulate the proceedings in a case within the walls or limits of the Court itself. *A. G. v. Sillem*, (1864) 10, HLC 704,

In Words and Phrases Vol. 33 at page a88 'Practice and Procedure' are said to relate to the legal rules directing the manner of bringing parties into the Court, and the method of the Court after they are brought in, in hearing, dealing with, and disposing of, matters in disputes between them.

In Jowitt's Dictionary of English Law 2nd edn. page 1438, procedure is the mode in which the successive steps in litigation are taken, see *Tata Oil Mills Co. Ltd. v. Hansa Chemical Pharmacy*, ILR (1979) 2 Delhi 236.

8. Custody of the Seal of the Court of Delhi – The law in force immediately before the

appointed day with respect to the custody of the Seal of the High Court of Punjab shall, with the necessary modifications apply with respect to the custody of the Seal of the High Court of Delhi.

9. Form of writs and other processes—The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court of Punjab shall with the necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court of Delhi.

10. Powers of Judge—(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-Section (2) of Section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub-section (1), 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 of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.

COMMENTS

Appeal – Against grant of exemption in Court fee – In a case of appeal against grant on exemption of Court fee, Ld. Single Judge held that in case plaintiff succeeds will pay Court fees from decretal amount – Appeal against the order that Ld. Single Judge can only postpone and can not grant exemption. Appeal raises an important question of law. Appeal is maintainable. *Sahara India Airlines v. R. A. Singh*, 1997 (68) DLT 891 : 1997 (43) DRJ 217.

Appeal – Against order rejecting review. – Order rejecting application for review is not ‘judgment’ – No appeal lies therefrom. *Basant Kharbanda v. Punjab & Sind Bank*, 1997 (1) AD (Delhi 398 : 1997 (40) DRJ 145 : 1997 (65) DLT 378. In *Shanker Moniram Nale v. Shilolsing Gannusing Rajput*, (1994) 2 SCC 753, an appeal was preferred against an order rejecting an application for review. Their Lordship held: –

“This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the mean time. It is not against the basic order. Order 47 Rule 7 of CPC bars an appeal against the order of the Court rejecting the review. On this basis, we reject the appeal.”

Appeal – Bar under Special Law – An order granting leave to a party to revoke the authority of an appointed arbitrator under section 5 of the Arbitration Act is not an appealable order under section 39 of Arbitration Act and even an Order appointing another arbitrator is not appealable. Appeal if not maintainable under section 39, also not maintainable under section 10 of Delhi High Court Act. *Chairman & Managing Director NTPC v. Raj Kishan & Co.*, 2001 (5) AD (Delhi) 242. (See also *Union of India v. S. Mohinder Singh*, AIR 1979 All. 342.)

Application for temporary injunction under section 41 read with section 2 of Arbitration Act dismissed by Single Judge. Appeal before Division Bench under section 10 of Delhi High Court Act is not maintainable in view of section 39 of the Arbitration Act. Former is a general and latter is a special law. *M/s. Banwari Lal Radhey Mohan v. Punjab State Cooperative Supply and Marketing Federation*, AIR 1983 Delhi 402 : 1983 (24) DLT 36 : 1983 Arb. LR. 28.

The provisions of section 39 of Arbitration Act cannot be said to have been repealed by implication by section 10 (1) of Delhi High Court Act, 1966 and thus section 10(1) cannot be held to confer right of an appeal against those orders which are not covered by section 39(1) of the Arbitration Act. *Union of India v. A. S. Dhupia*, AIR 1972 Delhi 108.

Appeal – Competency – An appeal under Section 10(1) of Delhi High Court Act would be competent if it falls under Section 104 C.P.C. or Order 43 Rule 1. *University of Delhi v. Hafiz Mohd. Said*, 1972 DLT 151.

Appeal – Intention of legislation – The draftsman could neither have intended to restrict the right of appeal only to final judgments disposing of the entire suit nor could have intended it to extend to all orders made during the course of trial, however ministerial or procedural in their nature of ineffectual on the rights of the parties. *Begam Aftab v. S. Lal Chand*, AIR 1969 Delhi 85.

Appeal – Legal right in dispute – Where a legal right is in dispute and ordinary Courts of country are seized of such disputes, Courts are governed by ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules notwithstanding that legal right claimed arises under a special statute, which does not in terms confer a right of appeal. The present case relates to a suit filed on the original side and an application which would give rise to a right of appeal for which forum is provided under section 10 of Delhi High Court Act. *Rattanlal & Others v. Krishan Kumar & Others*, 2002 (63) DRJ 233 : 2002 (1) AD (Delhi) 80.

Appeal – Maintainability – Maintainability of appeal after accepting costs granted by the order of learned Single Judge. The Cost received by the clerk of counsel without any express authority from the party. Immediate steps taken to refund the cost. Appeal is maintainable as no question of estoppel can arise. *Abdul Hamid & Others v. Charanjit Mehra*, 1995 (35) DRJ 472 : 1995 (60) DLT 847 : 1995 (4) AD (Delhi) 717.

Single Judge dismissing the petition under Art 226 challenging the preventive detention – Appeal to division bench is maintainable. *Harjinder Singh v. Union of India*, 1994 (29) DRJ 535 : 1994 (55) DLT 187.

Appeal – Mis-statement of material fact. – Petitioner directed by CEGAT to deposit full amount of duty. Petitioner filed writ in Nagpur bench of Bombay High Court where relief not granted. Against the same order of CEGAT, writ petition filed in Delhi High Court which granted interim order and same confirmed by Single Judge. Mis-statement of material fact that no similar writ petition filed in any other High Court or Supreme Court tantamount to concealing of material fact. In the result writ dismissed and interim order vacated. *Union of India v. Central Cables Pvt. Ltd.*, 1992 (22) DRJ 268.

Appeal – No inherent right – Section 10 of Delhi High Court Act does not confer any right of appeal. It provides only a forum of appeal. Appeal is a creature of statute and there is no inherent right of appeal. *Vidyawati Construction Company v. Rail India Tech. & Eco. Services*, 2001 (91) DLT 538 : 2001 (2) Arb.LR 254. (See also *East India Hotels Ltd. v. Jyoti Pvt. Ltd.*, 1996 III AD (Delhi) 242 : 1996 (36) DRJ 706.

Appeal – Order is not judgment – An order of the Single Judge ordering “notice” under Order 39 Rule 3 CPC is not a judgment under Section 10 of Delhi High Court Act and hence the appeal is not maintainable. *Nisha Raj & Anothers v. Pratap K. Kaula & Others*, 1995 (57) DLT 490 : 1995 RLR 307 : 1995 (32) DRJ 89.

Single Judge ordered for sending documents for adjudication under Stamp Act. Such order dealing with relevancy or admissibility of documents is not appealable. If an order deciding whether the document is relevant or admissible is not a ‘Judgment’, a fortiori, an order sending the document for adjudication cannot be a judgment. *M/s. Selected Marble Home v. Arun Kumar Gupta*, 1994 (30) DRJ 725 : 1994 RLR 454.

Appeal – Right of liquidator of dissolved company – Right of liquidator of dissolved company to file appeal – Single Judge held that liquidator could not represent non-existing company. Company was incorporated under GMBH Laws governed by the same. Court having jurisdiction over company on date of dissolution remains competent until the assets have been finally distributed. Suit by liquidator of dissolved company is maintainable. Appeal allowed and order of Single Judge set aside. *Hansipara GMBH v. Dresner Bank Frankfurt*, 1992 (22) DRJ 260. See also *Russian and English Bank v. Baring Brothers and Company Ltd.*, 1932 (1) Chancery Division 435.

Appeal – Second look over the matter – Suit for infringement of trade marks and passing off – Appellants restrained by Single Judge. The order passed by learned Single Judge should not be lightly interfered with. However, if the attention of the learned Single Judge has not been drawn to certain facets of the matter, or though the attention was drawn, but learned Single Judge, either did not feel it necessary to go far enough, due

to inequitable conduct of the party in an appeal under section 10, a Division Bench is not debarred to have a second look at those facts and facets of the matter. If parties or their counsel could not draw attention of learned Single Judge towards certain facts and facets and the tentative or final conclusions are apparently based on insufficient premises, a division bench, while hearing an appeal would be justified to have a second look over the matter and to form a different opinion on the basis of facts established by material on record and on established legal propositions. *Rob Mathys India (P) Ltd. v. Synthes Ag. Char.*, 1997 PTC 669 (D.B.).

Appeal – When order is not judgment – An order passed by a Single Judge during the hearing of civil suit granting or refusing leave to deliver interrogatories does not decide any right of a party to the suit nor does it conclude any stage in the suit or proceedings. It does not amount to a 'Judgment' within the meaning of section 10(1) so as to make it appealable. *Exports Unlimited v. Delhi State Industrial Development Corporation*, 1996 (37) DRJ 109 : 1996 (2) AD (Delhi) 570.

Exercise of jurisdiction – If Clause 10 of the Letters Patent was sufficient to provide the forum of appeals against judgments rendered in original jurisdiction contemplated by Section 5 of Delhi High Court Act, the legislature would not have enacted Section 10 at all in the High Court Act. So Clause 10 of the Letters Patent is not attracted in respect of judgments given by Single Judges of this Court while exercising jurisdiction under Section 5(2) of the Delhi High Court Act. *Neelam Mittal v. Sheel Kumar Mittal*, 1973 (2) ILR Delhi 616.

When a judgment is delivered by a Single Judge exercising the jurisdiction inherited from the Punjab High Court under Section 5(1) of Delhi High Court Act, then the appeal against it lies under Clause 10 of the Letters Patent. On the other hand when a single Judge delivers a judgment in the exercise of the ordinary original civil jurisdiction obtained from the subordinate Courts under Section 5(2) of the Act, then the appeal lies under Section 10(1) of the Act. Due to this basic difference, the meaning of the word 'judgment' in Clause 10 of the Letters Patent and Section 10(1) of the Act are different. The former includes a preliminary, interlocutory or final judgment or orders while the latter includes only a decree or an order appealable under the Code of Civil Procedure. *The Public Trustee v. Rajeshwar Tyagi*, AIR 1972 Delhi 302.

Judgment – Appeal against order closing judgment – Appeal against the order closing of evidence is not maintainable, as such order does not amount to judgment. Such orders are made during the course of recording of evidence and relate to the admissibility or relevancy of evidence and the conduct of the proceedings. These are of ancillary nature and do not have the attribute of finality. *Hari Singh v. Kharaiti Lal & Sons.*, 1995 (32) DRJ 309 : 1995 (1) AD (Delhi) 746.

Judgment – Appeal allowing amendment in written statement – Appeal against the order of ld. Single Judge allowing amendments in written statement. The order in question takes away the valuable right of the plaintiff to rely on the admission of the defendant and therefore would constitute a judgment rendering it appealable by way of letter patent appeal. *Abdul Hamid & Others v. Charanjit Mehra*, 1995 (35) DRJ 472 : 1995 (60) DLT 847 : 1995 (4) AD (Delhi) 717.

Judgment – Appeal from arbitrator's award – Decision of Single Judge on appeal from arbitrator's award is not a 'judgment' within Clause 10. Letters Patent (Delhi). Appeal under Clause 10 is incompetent. *Banwari Lal & Sons Pvt. Ltd. v. Union of India*, 1982 DRJ 12 (SN) : 1981 (20) DLT 225 : AIR 1981 Delhi 366.

Judgment – Interlocutory order. – Two issues framed for disposal of application. First regarding limitation and second regarding service of notice to defendants. Learned Judge directing that issue No. 2 be dealt first. Interlocutory Order directing the defendant to lead evidence first in respect of application under Order IX R13 CPC is not a judgment and therefore cannot be subject matter of appeal. Such order is only procedural in nature. Neither this order puts an end to the proceedings nor to application under Order IX Rule 13 CPC. *Satish Chandra v. Sanjiv Kalyal*, 1997 (67) DLT 377 : 1997 (4) AD (Delhi) 108. (See also *T. V. Tuljaram Row v. MK R. V. Alagappa Chettier*, (1912) ILR Mad. 1.)

Judgment – Kinds of – A judgment can be of three kinds, a final judgment, a preliminary judgment and intermediary or interlocutory judgment. The word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. *Shah Babulal Khimji v. Tciyaben* (1981) 4 SSC 816. See also *Judgal Kishore Paliwal v. S. Singh*, (1984)1 SCC 358.

Judgment – Meaning and scope – A judgment means a decision in an action whether final, preliminary or interlocutory which decides either wholly or partially, but conclusively in so far as the Court is concerned, the controversy which is the subject of the action. *Gokulchand D. Morarka v. Company Law Board*, 1974 (44) Co. Cases 173 Delhi.

Judgment – Meaning and scope – Because of original jurisdiction of Delhi Court depending upon valuation of suit, the word 'judgment' for the purpose of appeal has a special meaning. It would include orders which affect vital and valuable rights of parties. The term cannot be interpreted by reference to appealable orders enumerated in Order 43 C.P.C. Orders relating to addition of parties or amendment of pleading would be judgment and hence appealable. *Gurmauj Sarna v. Joyce Salim*, 1989 Raj. L.R. 74.

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. Similarly orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance of this score can be corrected by the appellate Court in appeal against the final judgment. *Swadeshi Polytext Ltd. v. V.K. Goel and others*, AIR 1987 Delhi 260.

It is not possible to lay down any definite rule which would meet the requirements of all the cases and all that we may say is that in determining whether an order or decision constitutes a "Judgment" or not the Court has to take into consideration the nature of the order and its effect upon the suit or the civil proceeding in which it is made. Each case would thus depend on its own peculiar facts and circumstances. *Begam Aftab v. S. Lal Chand*, AIR 1969 Delhi 85.

Judgment – Order overruling objection to execution – Order overruling objection to execution and directing recovery is a judgment. Appeal is maintainable. *Union of India v. M/s. Jagat Ram Trehan and Sons.*, AIR 1996 Delhi 191 : 1996 (61) DLT 779 : 1996 (36) DRJ 466. (*Radhey Shyam v. Shyam Behari Singh*, AIR 1971 SC 2337 followed.)

Latter patent appeal – Scope of – Interlocutory order simply adjourning the case and refusing to grant any interim order of restraint, is not a judgment, so not appealable to Division bench under letter patent. *Nico Resources Ltd. v. Gujarat State Petroleum Corporation*, 2000 (88) DLT 303 : 2000 (55) DRJ 654. (See also *Shah Babulal Khimji v. Jayaben D. Kanta*, (1981) 4 SCC 8, *Nisha Raj v. Pratap K. Kaula*, 1995 1, AD Delhi 533, *Exports Unlimited v. Delhi State Industrial Development Corporation*, 1996 (37) DRJ 109, *T. V. Tuljaram Row v. MKRV Alagappa Chettiar*, ILR 35 Madras 1, *Justice of the peace for Calcutta v. Oriental Gas Co. VIII Beng.*, LR 433, *Chandi Charan Saha v. Jriandendra Nath Bhattacharjee*, 29 Cal. LJ 225, *Muthura Sundari Dassi v. Haran Chandra Shaha*, AIR 1916 Cal. 361, *Shorab Merwanji Modi v. Mansata Film Distributors*, AIR 1957 Cal. 727, *Mohd. Felumeah v. S. Mandal*, AIR 1960 Cal. 582).

Letter patent appeal – Against dismissal of writ petition – Issue with regard to writ petition being not maintainable on the ground of delay and laches not raised at the time of hearing of the writ petitions, as the same does not find any place in the Judgment of learned Single Judge. Plea can not be raised in letter patent appeal. *Delhi Development Authority v. Shiyama Prasad Mukherjee Park Plot Holders Assn.*, 1998 (75) DLT 169 : 1998 (47) DRJ 147.

Letter patent appeal – Against order in writ petition – Clause 10 of Letters Patent, Section 10 of Delhi High Court Act, Section 141 of C.P.C. and Rule 19 of Original Side Rules cannot be invoked for appeal to an interim stay order granted by single Judge in Civil Writ Petition which is by way of extraordinary civil jurisdiction. *State of Himachal Pradesh v. Ajit Kumar*, ILR (1976) H.P. 24.

Letter patent appeal – Interference with order of trial judge – Considerations for exercise of jurisdiction to interfere with discretionary Order of trial judge – The Division Bench of the Court must give sufficient

allowance to trial judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice. *Gochwal Leasing & Finance (P) Ltd. v. Harish Chand Jhamb*, 1996 (37) DRJ 497 : 1996 (3) AD (Delhi) 718.

Letter patent appeal – Locus standi to file – Locus standi to file Letter Patent appeal – Appeals against the judgment of Single Judge allowing the Writ petitions and quashing the declaration made under section 6(1) of Land Acquisition Act as being violative of section 17(4) of the L A Act. – The beneficiary of the land has locus standi to challenge the order in letter patent appeal. *International Airport Authority of India v. Akhil Sibal*, 1996 (37) DRJ 1 : 1996 (2) AD (Delhi) 317.

Letter patent appeal – Scope of – Challenge to the order of Single Judge permitting a Will on record. Objection to production of Will on the ground of delay turned down. Appeal is not maintainable against such order as this does not fall within the definition of judgment. *Kusum Duggal v. Kaushalya Jhingan & Anothers*, 2000 (55) DRJ 831 : 2001 (89) DLT 146.

Direction to council to disclose the names of legal heirs of deceased party, does not decide any right of the parties. It is not a judgment subject to letter patent appeal. *Uttam Chand v. Canara Bank*, 1996 (63) DLT 303 : 1996 (38) DRJ 160.

There is no bar to the maintainability of a Letters Patent appeal under Clause 10 of the Letters Patent in proceedings under the Land Acquisition Act. Section 54 of the Land Acquisition Act does not contain any specific bar to the right of second appeal. Therefore the second appeal under the Letters patent will be available to the party concerned. *Mahli Devi v. Chander Bhan and Others*, AIR 1995 Delhi 293 : 1995 (58) DLT 162.

Respondent employee of Hindustan Commercial Bank, dismissed from service. Appeal against the order to Appellate Authority but no decision there on. Meanwhile the bank amalgamated with Punjab National Bank. Obligation passed on the Punjab National Bank to decide the appeal. Writ petition against Bank held maintainable and appeal allowed. *Punjab National Bank v. S.K. Poddar*, 2002 (65) DRJ 753 : 2002 (8) AD (Delhi) 4.

Ordinary and extra-ordinary jurisdiction – Section 10 becomes an all comprehensive section by covering all the types of intra-Court appeals. Thus by the application High Court has two types of original jurisdiction namely (1) ordinary and (2) extraordinary. The first type of jurisdiction is provided by sub-section (1) while the second type of jurisdiction is provided by sub-section (2) thereof. Historical perspective of both these types of original jurisdiction being different, the distinction between sub-sections (1) and (2) assumes importance. Intra-Court appeals contemplated both the sub-sections of Section 10 are against the judgment of a single Judge, because while sub-section (1) specifically refers to that expression, sub-section (2) makes a reference to that expression by necessary implication because it saves Clause 10 of the Letters Patent. *Asa Singh Kochhar v. Darshan Singh Kochhar*, ILR (1976) H.P. 551.

Special jurisdiction – Article 226 itself refers to several writs, which could be issued by the High Court. It creates a constitutional jurisdiction, which is entirely original, in ordinary parlance, it can be referred as a special jurisdiction; it cannot be classified as a Criminal Jurisdiction, at all, only because, a person in detention can invoke it for his release. *Harminder Singh v. Union of India*, 1994 (29) DRJ 535 : 1994 (55) DLT 187. (See *Mahomeddali Allabux v. Ismailji Abdulali*, AIR 1926 Bom. 332).

11. Procedure as to appeals to Supreme Court – The law in force immediately before the appointed day relating to appeals to the Supreme Court from the High Court of Punjab and the Judges and Division Courts thereof shall, with the necessary modifications, apply in relation to the High Court of Delhi.

12. Transfer of proceedings from the High Court of Punjab to the High Court of Delhi – (1) Except as hereinafter provided, the High Court of Punjab shall, as from the appointed day, have no jurisdiction in respect of the Union territory of Delhi.

(2) Such proceedings pending in the High Court of Punjab immediately before the appointed day as are certified whether before or after that day, by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances to be proceedings which ought to be heard and decided by the High Court of Delhi, shall, as soon as may be after such certification, be transferred to the High Court of Delhi.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section and in Section 5, but save as hereinafter provided, the High Court of Punjab shall have, and the High Court of Delhi shall not have, jurisdiction to entertain, hear or dispose of, appeals, applications for leave to appeal including leave to appeal to the Supreme Court, applications for review and other proceedings where any proceedings seek any relief in respect of any order passed by the High Court of Punjab before the appointed day:

Provided that if after any such proceedings have been entertained by the High Court of Punjab, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Delhi, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Punjab –

(a) before the appointed day, in any proceedings transferred to the High Court of Delhi by virtue of sub-section (2);

(b) in any proceedings with respect to which the High Court of Punjab retains jurisdiction by virtue of sub-section (3);

Shall for all purpose have effect, not only as an order of the High Court Punjab, but also as an order made by the High Court of Delhi.

13. Right to appeal or to act in proceedings transferred to the High Court of Delhi – Any person who, immediately before the appointed day, is an advocate entitled to practise or an attorney entitled to act, in the High Court of Punjab, and was authorised to appear or to act in any proceedings transferred from that High Court to the High Court of Delhi under Section 12, shall have the right to appear or to act, as the case may be, in the High Court of Delhi in relation to those proceedings.

14. Interpretation – For the purposes of Sections 12 and 17.

(a) proceedings shall be deemed to be pending in a Court until that Court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings and shall include appeals applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petition for writs;

(b) references to a High Court shall be construed as including references to a Judge or

Division Court thereof, and references to an order made by a Court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that Court or Judge.

15. Savings—Save as provided in Section 4, nothing in this Act shall affect the application to the High Court to Delhi of any provisions of the Constitution, and this Act 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.

16. Pending Proceedings before subordinate Court in Delhi—All proceedings immediately before the appointed day in any subordinate Court in the Union Territory of Delhi in or in relation to any such civil suit as is referred to sub-section (2) of Section 5 shall in that day stand transferred to the High Court of Delhi which shall proceed to try, hear and determine the matter as if it had been pending therein.

17. Extension of the jurisdiction of the High Court of Delhi—(1) As from such date as the Central Government may, by notification in the Official Gazette, appoint (hereinafter referred to as the prescribed date), the jurisdiction of the High Court of Delhi shall extend to the Union Territory of Himachal Pradesh.

(2) As from the prescribed date the Court of the Judicial Commissioner for Himachal Pradesh shall cease to function and is hereby abolished:

Provided that nothing in this sub-section shall prejudice or effect the continued operation of any notice served, injunction issued, direction given, or proceedings taken before the prescribed date by the Court of the Judicial Commissioner for Himachal Pradesh abolished by this sub-section.

(3) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union Territory of Himachal Pradesh, —

(a) All such original, appellate and other jurisdiction as under the law in force immediately before the prescribed date, is exercisable in respect of the said territories by the Court of the Judicial Commissioner for Himachal Pradesh; and also

(b) Ordinary original civil jurisdiction in every suit the value of which exceeds ^{3[3]}[fifty thousand rupees,] notwithstanding anything contained in any law for the time being in force.

(4) All proceedings pending in the Court of the Judicial Commissioner for Himachal before the prescribed date shall stand transferred to the High Court of Delhi.

(5) Any order made before the prescribed date by the Court referred to in sub-section (4) shall for all purposes have effect not only as an order of that Court but also as an order of the High Court of Delhi.

(6) For the removal of doubts, it is hereby declared that the provisions of Sections 7 to 11 and 13 shall, with the necessary modifications, apply to the High Court of Delhi in the exercise of jurisdiction conferred upon it by this section.

(7) All proceeding pending immediately before the prescribed date in any subordinate Court in the union Territory of Himachal Pradesh in or in relation to any such civil suit as is referred to in clause (b) of sub-section (3) shall on that date stand transferred to High Court of Delhi which shall proceed to try, hear and determine the matter as if it had been pending therein.

18. Rule of construction—(1) References in any law in force in the Union Territory of Delhi to the High Court of Punjab shall, as from the appointed day, be construed in relation to that Union territory, as references to the High Court of Delhi.

(2) References in any law in force in the Union Territory of Himachal Pradesh to the High Court of Punjab or to the Court of the Judicial Commissioner for that territory shall, as from the prescribed date, be construed in relation to that Union territory as references to the High Court of Delhi.

19. [Section 19 and Schedule repealed by the Repealing and Amending Act, 1976 (56 of 1976), Section 2 and First Schedule.]

20. Power to remove difficulties—(1) If any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by notified order, make such provisions as appears to it to be necessary or expedient for the removal of the difficulty.

(2) Every order under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session or in two successive sessions, and if, before the expiry of the session for a total period of thirty days which may be comprised in one session in which it is so laid or the session immediately following, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

21. Power to adapt laws—For the purpose of facilitating the application of any law in relation to the Union territory of Delhi or Himachal Pradesh, Central Government may, before the expiration of two years from the appointed day in relation to the Union territory of Delhi and before the expiration of two years from prescribed date in relation to the Union territory of Himachal Pradesh, by order, make such adaptations and modifications of the law, whether by

^{3[3]}. Substituted by Act No. 37 of 1969, for the words “twenty-five thousand rupees.”

way of repeal or amendment, as may be necessary or expedient to give effect to the provisions of this Act and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Text of Section 4 of the Delhi High Court (Amendment) Act, 2003

4. Power of Chief Justice to transfer pending suits and proceedings to subordinate

Courts—The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate Court in the National Capital Territory of Delhi as would have the jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement.

HIGH COURT OF DELHI, NEW DELHI

OFFICE ORDER

Notification No. 31/DHC/Orgl 23.7.2003 – In exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2003 (Act 35 of 2003), hereinafter referred to be ‘the Act’ Hon’ble Chief Justice has been pleased to order that all pending suits or other proceedings pending in the Delhi High Court on the original side up to the value of Rs. 20 lakhs, excepting those cases in which orders for final judgment have been reserved, be transferred to the District/Subordinate Courts in pursuance of the provision of the Act which came into force with effect from 16.07.2003 vide Notification No. F No. 1-117015/1/2002-Jud. Dated 16.07.2003 issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 sub-section (ii).

The transfer of cases to the District/Subordinate Courts shall commence from 24.07.2003

Endst. No. 878/DHC/Orgl.

Registrar General
July 23, 2003

COMMENTS

Transfer of pending suits—Exception to the cases in which issues have been framed. It is a mixed question of law and fact. The expression ‘issues’ does not include preliminary issues. ‘Issues are to be framed’ is not covered under excepted categories. Clause (iii) of the order dated 18-12-1992 of the Honble Chief Justice covers only such cases where all the issues have been framed so as to set down the case for trial. *D. P. Bhalla vs. Cement Corporation of India Ltd.*, 1995 (58) DLT 188 : 1995 (1) AD (Delhi) 1425.

When Delhi High Court Act was amended in 1991 and pecuniary limit was raised from “rupees one lakh” to “rupees five lakhs” –The notification dated 18-12-1992 (for transfer of pending suits, contained exception to cases in which issues have been framed. It was held that expression issues does not include preliminary issues. ‘Issue are to be framed’ is not covered under excepted categories. Clause (iii) of the order dated 18-12-1992 of the Hon’ble Chief Justice covers only such cases where all the issues have been framed so as to set down the case for trial

Power of Chief Justice to transfer pending suits in view of sec. 4 of Amendment Act, (*Now see Amendment Act 2003*) is administrative in nature and is neither judicial nor quasi judicial. Chief Justice has not abdicated his functions enjoined upon him under section 4 of the Amendment Act and his impugned act is beyond challenge. *Delhi High Court Bar Association vs. Honble Chief Justice High Court of Delhi*, 1993 (26) DRJ 99 : 1993 (50) DLT 532.
