Before G.S. Singhvi, M.M. Kumar & Kiran Anand Lall, JJ

PARSHOTAM DASS AND OTHERS—*Appellants*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

L.P.A. No. 1246 OF 1991

10th April, 2003

Code of Civil Procedure, 1908—S. 100-A [as amended by Code of Civil Procedure (Amendment) Act, 1999 and Code of Civil Procedure (Amendment) Act, 2002]—Appeal against an order of High Court exercising powers of first Appellate Court—Amendment in the provisions of C.P.C. for speedy disposal of cases—Enforcement of amended Acts w.e.f. 1st July, 2002—S. 100-A as substituted by S. 10 provides that no further appeal lies against judgment and decree passed by Single Judge arising from an original, appellate decree or order—Such appeals held not to be maintainable—S. 32(2)(g) of 1999 Act protects the appeals already admitted and pending for decision before the enforcement of amended Acts—Whether appeals pending before the commencement of amended Acts maintainable—Held, yes—Right of appeal—A substantive and vested right—In the absence of an express provision such right cannot be taken away with retrospective effect—Appeals filed before enforcement of the amended Acts held to be maintainable.

Held, that after 1st July, 2002 no appeal would lie to the Letters Patent Bench against the judgment and decree passed by the learned Single Judge arising from an original or appellate decree or order.

(Para 21)

Further held, that there is a strong presumption against the retrospective operation of a statute affecting substantive and vested rights unless it is expressly provided or inferred from necessary intendment. Such a view is required to be taken because law is not inclined towards the interpretation that a legislation by retrospective operation could take away substantive and vested rights.

(Para 26)

Further held, that the right of appeal is a substantive right and there is a prohibition against raising a presumption of retrospectivity that substantive rights are intended to be taken away by retrospective effect of a legislation. Clause (g) of sub-section (2) of Section 32 protected those letters patent appeals which have already been admitted and were pending for decision. Such letters patent appeals were to be decided as if Section 100A of 1999 Act was not enacted. In other words, in 1999 the legislature in its wisdom preferred to save both types of pending letters patent appeals which were admitted before the enforcement of 1999 Act on the assumption that Section 100A of 1999 Act substituting Section 100A had never come into force.

(Para 27)

Further held, that the letters patent appeals which have already been filed before 1st July, 2002 are the only appeals which are intended to be protected. The letters patent appeals which are to be filed on or after 1st July, 2002 would not be maintainable because the bar created by section 100A of 2002 Act would become operational. In other words, Section 100A of 2002 Act would not affect the accrued right of appeal vested in a suitor who has actually filed the appeal before 1st July, 2002 but those who are yet to file the appeal on or after 1st July, 2002 would not be entitled to maintain the same.

(Para 32)

Ashok Aggarwal, Senior Advocate *for the appellants.*

Jaswant Singh, Senior Deputy Advocate General, Haryana *for respondents Nos. 1 and 2.*

M.L. Sarin, Senior Advocate with Ms. Sweena Pannu, Advocate *for respondent Nos. 3 to 6.*

R.S. Mittal, Senior Advocate with Sudhir Mittal, Advocate *for the interveners.*

D.S. Bali, Senior Advocate with D.V. Gupta, Advocate *for the interveners.*

Yogesh Kumar Sharma, Advocate *for the interveners.*

JUDGEMENT

M.M. Kumar, J.

(1) Every time reforms are carried in substantive law or procedural law, there is resistance to its introduction and efforts are made at least to confine such reforms to the convenient limits suitable to a litigant. Many of the reforms recommended in the Code of Civil Procedure in the report of Justice V.S. Malimath are sought to be concretised and implemented by the amendments of various provisions of the Code of Civil Procedure, 1908 (for brevity, 'the Code'). Two Acts have now been enacted by the Parliament which are known as the Code of Civil Procedure (Amendment) Act, 1999 (for brevity, '1999 Act') and the Code of Civil Procedure (Amendment) Act, 2002 (for brevity, '2002 Act'). Both the Acts have been enforced w.e.f. 1st July, 2002. The basic object of these reforms appears to be speedy disposal of cases, *inter alia*, by curtailing the right of intra Court appeal. It is in this context that two significant questions have arisen before the Letters Patent Bench during the course of hearing of the instant Letters Patent Appeal No. 1246 of 1991. An objection was raised on behalf of the respondents that the letters patent appeal was not maintainable in view of Section 100A as amended and enforced by 2002 Act. On the basis of preliminary objection, the Letters Patent Bench framed two significant questions having wide ramifications which have arisen on account of amendment and enactment of Section 100A of 2002 Act. As the aforementioned two questions are likely to arise in a large number of cases and were thus of vital public importance, the Letters Patent Bench felt the necessity of referring those questions to a Full Bench for authoritative settlement. The questions referred to the Full Bench are as under :—

> "(1) Whether Letters Patent Appeal would lie against the judgment and decree passed by the learned Single Judge in an appeal arising from an original or appellate decree or order ?
>
> (2) Whether the Letters Patent Appeals filed before 1st July, 2002 are liable to be dealt with and decided in accordance with amended Section 100-A of the C.P.C. ?"

FACTS :

(2) Brief facts of the case necessary to put the controversy in its proper perspective may first be noticed. On 17th October, 1978, State of Haryana—respondent No. 1 issued a notification under Section 4 of the Land Acquisition Act, 1894 (for brevity, 'the Act') expressing its intention to acquire the specified area of land. After following the procedure of hearing objections under Section 5A of the Act, a notification under Section 6 of the Act was issued on 3rd August, 1979. The award was announced by the Collector on 2nd June, 1982 by fixing the rates of different parcels of land. Against the order of Collector, petitions were filed under Sections 18 and 30 of the Act praying for enhancement and apportionment of compensation. The appellants in the instant letters patent appeal filed Land Acquisition Case No. 152/4 of 1983 claiming that they were entitled to apportionment of the compensation awarded to respondent Nos. 3 to 6 on the ground that they were tenants under those respondents. The Additional District Judge, Karnal enhanced the amount of compensation and held that Parshotam Dass was in cultivating possession of the Land as tenant in Khasra No. 9094 at the rate of Rs. 100 as rent which he continued cultivating. It was further held that Hari Ram father of all the appellants was in cultivating possession of Khasra No. 9095 since 1954 and that he died in the year 1971. Feeling aggrieved from order dated 12th March, 1986 passed by the Additional District Judge, respondent Nos. 3 to 6 filed Regular First Appeal No. 1399 of 1986. The aforementioned appeal was allowed reversing the findings recorded by the Additional District Judge in favour of the appellants by holding that the appellants have failed to prove their tenancy over the land comprised in Khasra Nos. 9094 and 9095. Therefore, they were held not entitled to apportionment of compensation determined for the acquired land. The appellants who claim themselves to be the tenants under respondent Nos. 3 to 6 have preferred the instant appeal challenging the judgment dated 6th June, 1991 of learned Single Judge. The objection has been raised on behalf of respondent Nos. 3 to 6 that by virtue of Section 100A of 2002 Act, the letters patent appeal is not maintainable.

ARGUMENTS—APPEAL MAINTAINABLE :

(3) We have heard Shri Ashok Aggarwal, learned counsel for the tenant-appellants, Shri R.S. Mittal who has appeared for the

interveners and supported the proposition that the letters patent appeal was maintainable and Shri Jaswant Singh, learned Senior Deputy Advocate General, Haryana for respondent Nos. 1 and 2. We have also heard Shri M.L. Sarin, learned counsel for respondent Nos. 3 to 6 who are the claimant-owners and Shri D.S. Bali, learned counsel for the interveners who has supported the proposition that no letters patent appeal is competent.

(4) Shri Ashok Aggarwal, learned counsel for the tenant-appellants has made a reference to Section 100A as amended by Section 10 of 1999 Act and also by Section 4 of 2002 Act. He has also referred to Section 32(g) and (h) of 1999 Act and Section 16 of 2002 Act. On the basis of aforementioned provisions, the learned counsel has raised the following agruments :—

(a) That the amendments carried in Section 100A by 1999 Act and 2002 Act are not retrospective in nature as is evident from the plain language of this section. According to the learned counsel the right of filing appeal had accrued to the appellants in 1991 which has also been availed. Therefore, a right has come to be vested in the appellants. He further submitted that a vested right cannot be deemed to be taken away by the amendments made by 1999 Act and 2002 Act unless the legislature itself has provided for it.

(b) That Section 100A of 1999 Act and 2002 Act employs a non-obstante clause. According to the learned counsel the effect of a non-obstante clause would be that henceforth i.e. from 1st July, 2002, the right of further appeal would not be available which would mean that the appeals already filed and pending are saved. In support of his submission, the learned counsel has placed reliance on para 12 of the judgment of the Supreme Court in **R. Rajagopal Reddy (dead) *by L.Rs. and others*** versus ***Padmini Chandrasekharan (dead) by L.Rs.(l).*** He argued that the expression "shall not lie" used in the amended Section 100A of 1999 Act and 2002 Act should receive the same meaning

(1) AIR 1996 S.C. 238

as it received before the Supreme Court because this expression used in Benami Transactions (Prohibition) Act, 1988 (for brevity, 1988 Act') has been construed by the Supreme Court to mean that it would affect only those transactions which have taken place after the enforcement of 1988 Act.

(c) That the right of appeal is a substantive right although the manner or mode of filing the appeal or its forum may be part of the procedure. According to the learned counsel, a substantive right cannot be taken away retrospectively unless it is expressly nullified by a statute. For this proposition, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of ***Garikapati Veeraya*** versus ***N. Subbiah Choudhary and others (2).***

(5) On the basis of these submissions, the learned counsel has argued that the answer to the first question has to be in the negative and to the second question in the affirmative.

(6) Shri R.S. Mittal, learned counsel for the intervener has argued that Section 100A was inserted in the year 1976 incorporating provision for entertainment of an appeal only against the original or appellate decree and not against the decrees for which second appeal has been provided. He has further submitted that Section 10 of 1999 Act has substituted the old Section 100A by using the expression "shall be substituted", yet Section 32 of 1999 Act dealing with Repeal and Savings has provided exception to the rule made by Section 10. Referring to the provisions of clause (g) of Section 32(2), the learned counsel has submitted that the amendment made in Section 100A saves the appeal filed against the judgment of a learned Single Judge or order of the High Court issued under Articles 226 or 227 of the Constitution which stands admitted before 1st July 2002. In other words, the appeals which have already been admitted against the decision of learned Single Judge of this Court under Article 226 or 227 of the Constitution are required to be dealt with in accordance with the old provisions. He has further made a reference to Section 16(2) of 2002 Act wherein, no such savings have been made and submitted that Section 6(b)(c) and (e) of the General Clauses Act, 1897 (for brevity, '1897 Act') would save all the pending appeals from the effect of the amendment as provided by Section 16(2) of 2002 Act.

(2) AIR 1957 S.C. 540

(7) Shri Mittal has further argued that the right of appeal has to be considered in the light of the principle that the appeal is a continuation of the suit. Therefore, he went to the extreme argument that if the right of appeal was available on the date of filing the suit to a suitor, then it should continue to be available because at the time when he filed the suit, he had an existing right to file the appeal. According to the learned counsel such a vested right cannot be taken away. To substantiate his submission, the learned counsel has placed reliance on ***Jose Decosta*** versus ***Bascora, (3) Jayantilal Amratlal*** *v.* ***The Union of India and others (4), State of Punjab*** versus ***Mohar Singh Pratap Singh, (5) Suresh Koshy George*** versus ***University of Kerala and others (6) D. Srinivasan*** versus ***Commissioner and others (7). Ambalal Sarabhai Enterprises Ltd.*** versus ***Amrit Lal and Company and another, (8).*** He has also placed reliance on the judgments of various High Courts in the cases of ***Kartar Singh*** versus ***Haripal Singh (9). Oriental Insurance Company Ltd. Haldwani*** versus ***Dhanran Singh and others (10). Shesh Kumar Pradhan Sheshdeo*** versus ***Keshbo s/o Naryana Aghariya and others, (11) and Nand Kishore Moharana*** versus ***Mahabir Prasad Lath, (12)*** Shri Mittal has then referred to the provisions of Section 6 of 1897 Act as Section 32 concerning Repeal and Savings Clause of 1999 Act and Section 16 of 2002 Act has been enacted without prejudice to the generality of provisions of 1987 Act to save any right that might have accrued before the amendment.

Arguments—Appeal not maintainable :

(8) Shri M.L. Sarin, learned counsel for the claimant-respondents has raised another extreme argument. He has contended that no appeal could be continued and maintained after the amendment has been made in Section 100A of the Code by 1999 Act and 2002

(3) AIR 1975 S.C. 1843
(4) AIR 1971 S.C. 1193
(5) AIR 1955 S.C. 84
(6) AIR 1969 S.C. 201
(7) (2000)3 S.C.C. 548
(8) (2001)8 S.C.C. 397
(9) AIR 1960 Punjab 29
(10) AIR 1990 Allahabad 104
(11) AIR 1980 Madhya Pradesh 166
(12) AIR 1978 Orissa 129

Act. According to the learned counsel, on perusal of the amendment which have been passed and then omitted, the Repeal and Savings clause as well as host of other factors, the necessary intendment of the legislature would become absolutely clear that only those pending appeals were intended to be saved which have arisen out of the judgement delivered by a learned Single Judge under Articles 226/ 227 of the Constitution. The rationale for assuming the intendment on the basis of which this argument is built by Shri Sarin is that 1999 Act had substituted Section 100A by providing a new section. He has drawn our attention to Section 10 of 1999 Act. He then referred to Section 32 (2)(g), which deals with Repeal and Savings clause to argue that 1999 Act saved those appeals, which were directed against the decision of the learned Single Judge decided under Article 226 or Article 227 of the Constitution and which had been admitted before the enforcement of Section 10, nemely, the substituted Section 100A. He has further referred to Section 4 of 2002 Act, which has still further substituted Section 100A.

(9) The learned counsel has also drawn our attention to Section 16(2) of the Repeal and Savings of 2002 Act and argued that only those appeals are intended to be saved, which are decided by the learned Single Judge while exercising jurisdiction under Article 226/227. In other words, a judgment delivered by the learned Single Judge while exercising appellate jurisdiction in cases like the one in hand or in appeals such as arising out of Motor Vehicles Accident Claims, no Letters Patent would be competent since those are intended to be saved. The leanred counsel has placed reliance on a Constitution Bench judgment of the Supreme Court in the case of **Garikapati Veeraya's case** *(supra)* and drawn our attention to the 5th principle laid down by the Constitution Bench holding that the 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.

(10) According to the learned counsel, the way Parliament has first enacted Section 10 by promulgating 1999 Act, in which express provision was made prohibiting the filing of appeal even in cases where judgment has been passed by the learned Single Judge while exercising original jurisdiction under Article 226 or 227 of the Constitution and then saving the appeals filed against a judgement of the learned Single Judge passed under Article 226 or

227 of the Constitution, which stood admitted before the commencement of Section 10 would show that only those admitted appeals could be saved and heard, which have been admitted before the commencement of Section 10. In other words, the appeal arising from the exercise of appellate jurisdiction by the learned Single Judge would not be saved and, therefore, the present appeal would not be competent.

(11) The learned counsel has also argued that there can hardly be any quarrel with the proposition propounded by the learned counsel for the appellant that right of appeal is a substantive right as is held by the Supreme Court in the case of Jose Decosta (supra) and in the case of ***Rajendra Kumar*** versus ***Kalyan,*** (13). According to the learned counsel, both these judgements would clearly establish that procedural law as against substantive law can operate retrospectively even in the absence of any express provisions or necessary intendment but the substantive law could operate retrospectively only if there is express provision or necessary intendment reflected by the legislation.

(12) He has then argued that one thing is absolutely beyond any controversy that after July, 1, 2002, no appeal would be competent whether it is filed before July 1, 2002 or earlier with application for making up the deficiency under the Court Fee Act or seeking condonation of delay under Section 5 of the Limitation Act, 1963. According to the learned counsel, no such appeal has been saved. The learned counsel also argued that necessary intendment of the legislature is also clear from the perusal of Sections 4, 5, 15(b) and 16, which saved only specified Regular Second Appeal and no Letters Patent Appeal has been saved by Section 16(2)(2)(b). In support of his argument he has also referred to the provisions of Section 5 of 2002 Act, which have substituted Section 102 of the Code, Therefore, according to the learned counsel, by necessary intendment even the right to continue the appeal already filed before July, 2002 has been taken away.

(13) Shri Yogesh Kumar Sharma, learned counsel for the interveners has supported the argument of Shri Sarin. The learned counsel has placed reliance on a judgement of the Supreme Court in the case of ***Channan Singh and another*** versus ***Smt. Jai Kaur (14).*** Where the Supreme Court has interpreted Section 31 of the

(13) (2000)8 S.C.C. 99
(14) AIR 1970 S.C. 349

Punjab Pre-emption Act, 1913 (as amended by the Amending Act No. 10 of 1960) to be comprehensive enough to require an appellate Court to give effect to the substantive provision of the Amending Act whether the appeal before it was one against a decree granting pre-emption or one refusing that relief. In this regard, he has also made a reference to paragraph 47 of the judgment in the case of ***Ram Sarup*** versus ***Munshi (15),*** and argued that when the substantive law is altered during the pendency of an action, then rights of the parties are decided according to the law as it existed when the action began unless the amended statute shows a clear intention to vary such rights.

Statutory Provisions :

(14) Before recording our conclusion on the two significant questions referred to us, it would be appropriate to make a reference to the Legislation and the report of Justice V.S. Malimath along with their reasons and objects. The statement of objects and reasons appended to Bill No. L of 1997 shows that the Bill was introduced with a view to implement the recommendations of Justice Malimath Committee which were aimed at making efforts to expedite the disposal of civil suits and proceedings. Apart from the other recommendations the changes were proposed to be made that no intra Court appeal against the judgment of a Single Judge would lie which included the orders passed on a petition filed under Articles 226 or 227 of the Constitution. The notes on Clause 10 as published in the Gazette of India Extra Ordinary Part II reads as under :—

> "Clause 10.—Justice Malimath Committee examined the issue of further appeal against the judgment of Single Judge exercising even a first appellate jurisdiction. The Committee recommended for suitable amendments to section 100A of the Code with a view to provide that further appeal in this regard shall not lie. The Committee also recommended for suitable enactment by Parliament for abolition of appeal to a Division Bench against the decision and order rendered by a Single Judge of the High Court in proceeding under articles 226 or 227 of the Constitution. Clause 10 seeks to substitute a new section 100A with a view to provide for no further appeal in the above cases."

(15) AIR 1963 S.C. 553.

(15) On the basis of the Bill, 1999 Act was passed on 30th December, 1999. Section 10 substituting Section 100A, Section 32(1), (2)(g)(h) and (v) which are relevant for deciding the controversy in the instant case read as under :—

> **"10. Substitution of new section for section 100A.**— For section 100A of the principal Act, 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 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 227 of the Constitution,
>
> by a single Judge of High Court, no further appeal shall lie from the judgement, decision or order of such Single Judge."
>
> .....
>
> **"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 insofar 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),—
>
> (a) to (f) xx xx xx xx
>
> (g) the provisions of section 100A of the principal Act, as substituted by section 10 of this Act, shall not apply to or affect any appeal against the decision of a Single

Judge or 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 desposed of as if section 10 had not come into force:

(h) the provisions of section 102 of the principal Act, as substituted by section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 11: and every such appeal shall be disposed of as if section 11 had not come into force :

(i) to (u) xx xx xx xx

(v) the provisions of rules 1,9,11,12,13,15,18,19 and 22 of Order XLI of the First Schedule, as amended, substituted and omitted, as the case may be, by clause 32 of the Bill shall not affect any appeal filed before the commencement of section 32; and every appeal pending before the commencement of section 32 shall be disposed of as if section 32 of this Bill had not come into force." (emphasis added)

(16) It is pertinent to mention that the aforementioned Act of 1999 was enforced w.e.f. 1st July, 2002 by publishing the notification dated 6th June, 2002 in the Gazette of India.

(17) The 2002 Act was also enforced w.e.f. 1st July, 2002 by publishing the notification dated 6th June, 2002 in the Gazette of India. Section 4 showing further changes in Section 100A of 1999 Act, Section 15(a)(b)(i) and Section 16 of 1999 Act in so far as they are relevant are reproduced hereunder :—

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

"100A. No further appeal in certain cases.—Notwithsatnding 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 judgement and decree of such Single Judge."

.....

"15. Amendment of the Code of Civil Procedure (Amendment) Act, 1999.—In the Code of Civil Procedure (Amendment) Act 1999 (46 of 1999),—

(a) section 30 shall be omitted ;

(b) in section 32 in sub-section (2),—

(i) clauses (g) and (h) shall be omitted.

xx xx xx xx

.....

16. Repeal and savings.—(1) Any amendment made, or any provison 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 5: and every such appeal shall be disposed of as if section 5 had not come into force ;

(b) the provisions of rules 5,15,17 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 Code of Civil Procedure (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 Code

of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act."

(18) It would also be pertinent to note that Section 100A as it stood before 1999 Act reads as under :—

> "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." (emphasis added)

(19) The 1897 Act has also been repeatedly refrred to during the course of argument and hence it would be necessary to made reference to Section 6, 6A, 7 and 8 of that Act which read as under :—

> "6. Effect of repeal.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid:

and any such investigation legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

.....

6A. Repeal of Act making textual amendment in Act or Regulation.—Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

.....

7. Revival of repealed enactments.—(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving either wholly or partially any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all [Central Acts] made after the third day of January, 1968, and to all Regulations made on or after the fourteenth day of January, 1887.

.....

8. Construction of references to repealed enactment.—[(1) Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

[(2)] [Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then references in any [Central

Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears,be construed as references to the provisions so re-enacted.]"

(20) A conjoint reading of Section 100A as substituted by 1999 Act and 2002 Act would show that the language of two sections differs in contents and substance. Under Section 10 of 1999 Act, a letters patent appeal was sought to be excluded in cases where any writ, order or direction is issued by the High Court under Articles 226 or 227 of the Constitution, in addition to the letters patent appeal from an original appellate decree or order heard and decided by a learned Single Judge of the High Court. However, Section 100A as enacted by Section 4 of 2002 Act did not cover any writ, direction or order issued under Articles 226 or 227 of the Constitution. In other words, no letters patent appeal was maintainable in respect of an original, appellate decree or order in a case heard and decided by a learned Single Judge of the High Court, whereas the letters patent appeal in respect of a writ, direction or order made under Article 226 or Article 227 of the Constitution would be maintainable. It may further be pointed out that Section 32(2)(g) which is a Repeal and saving clause of 1999 Act makes it further explicit that Section 10 substituting Section 100A of the Code was to operate prospectively inasmuch as it was clarified that all pending appeals admitted before the commencement of Section 10 of 1999 Act were to be disposed of as if Section 10 had not come into force. It is further interesting to note that Section 32(2)(g) was omitted by Section 15 of 2002 Act which would imply that Section 10 of 1999 Act stood substituted by Section 4 of 2002 Act and, therefore, has to be read with sub-section (2) of Section 16 of 2002 Act which provides a non-obstante clause so that effect be given to the provisions of Section 6 of 1897 Act. Section 6 of 1897 Act expressly provides that in case an Act is repealed unless an express intention appears, such a repeal is not to affect any right, privilege, obligation or liability, acquired, accrued or incurred under the repealed enactment. Therefore, it has become patent that after 1st July, 2002, no letters patent appeal would be competent against the judgment and decree passed by the learned Single Judge in an appeal arising from an original or appellate decree or an order. This question has also been answered by the Supreme Court in the case of ***Salem Advocate Bar Association, Tamil Nadu*** versus ***Union of India (16),*** Dealing with the aforementioned question, their Lordships have

(16) JT 2002 (9) S.C. 175

pointed out that a party would not suffer any prejudice if no intra-court appeal is provided. In this regard the observations of thier Lordships read as under :—

> "Section 100A deals with two types of cases which are decided by a single judge. One is where the single judge hears an appeal from an appellate decree or order. The question of there being any further appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a single judge or by a division bench of the High Court. Where the regular first appeal so filed is heard by a division bench, the question of there being an intra-court appeal does not arise. It is only in cases where the value is not substantilal that the rules of the High Court may provide for the regular first appeal to be heard by a single judge. In such a case to give a further right of appeal where the amount involved is nominal to a division bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-court appeal, even where the value involved is large. In such a case, the High Court by rules, can provide that the division bench will hear the regular first appeal. No fault can, thus, be found with the amended provision of section 100A."

(21) In view of above enunciation of law by the Supreme Court, it becomes evident that after 1st July, 2002 no appeal would lie to the Letters Patent Bench against the judgment and decree passed by the learned Single Judge arising from an original or appellate decree or order. The first question, therefore, has to be answered in the negative.

(22) The question then is what meaning should be given to the expression 'no further appeal shall lie from the judgment and decree'. Whether these words would mean that no appeal against an

original, appellate decree or order would lie in future or it would affect even the appeals filed, pending and admitted. In R. Rajagopal Reddy's case *(supra)* this question had arisen in respect of 1988 Act dealing with benami transactions. Section 4 of 1988 Act has prohibited the right to recover property held benami and no suit, claim or action to enforce any such right 'shall lie' against the person in whose name the property is held. While interpreting the aforementioned provisions, the supreme Court held that 1988 Act is not retrospective in the sense that all benami transactions entered into before the specified date could be reopened and governed by the provisions of 1988 Act. The views of their Lordships read as under :—

> "Before we deal with these six considerations which weighed with the Division Bench for taking view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even up to this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by others benami. Such an act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visulise that sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19th May, 1988, shall not lie. The legislature in its wisdom has nowhere

provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word lie has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with topic No. 9 under the definition of term 'lie' it is stated as under :—

"For an action, claim appeal etc. to subsist : be maintainable or admissible."

The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the concerned defendant in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken by that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of an property held benami would get effected once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section

4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the Section may be retroactive....."
(emphasis added)

(23) In R.Rajagopal Reddy's case (supra) a three Judge Bench of the Supreme Court reconsidered the earler view of two Judges in the case of ***Mithilesh Kumari and another*** versus ***Prem Behari Khare***, (17). The question which fell for consideration was as to 'whether the provisions of 1988 Act would apply to the pending appeals'. In ***Mithilesh Kumari's case*** *(supra)* the Supreme Court has taken the view that if an appeal was pending before the Supreme Court when 1988 Act was enacted then the appeal would be governed by the provisions of 1988 Act. In that case, the plaintiff had filed a civil suit praying for the declaration to the effect that he was the sole and real owner of the suit house and the defendant be permanently restrained from transferring the suit house. The suit was decreed on 13th March, 1974 declaring the plaintiff to be the sole and the real owner of the suit house and the decree had permanently restrained the defendant from transferring the suit house to any other person. An appeal was dismissed by the Additional District Judge on 23rd October, 1974 and the second appeal before the High Court was also dismissed on 27th March, 1978. The defendant filed appeal before the Supreme Court. It was during the pendency of her appeal that 1988 Act came into force. The question which arose before the Court was as to whether the provisions of 1988 Act would apply so as to debar the plaintiff to seek any declaration'. It was on these facts that the Supreme Court took the view that 1988 Act would apply and the suit of the plaintiff was liable to be dismissed. The Supreme Court held that 1988 Act is declaratory in nature and once the statute is declaratory then presumption against retrospectivity is not applicable because Act of this kind only declares the existing rights.

(24) The aforementioned proposition was not approved by the Supreme Court in **R.Rajagopal Reddy's case** *(supra)* because it was held that 1988 Act had by its express languge used in Section 3 had destroyed the rights of the real owner with regard to properties held benami. Therefore, it could not be regarded as a declaratory statute but in substance it is prohibitory in nature and nullifies existing rights. The statute has taken away the right of the real owner both

(17) AIR 1989 S.C. 1247

with regard to seeking a declaration and setting up such a defence in a suit by a benamidar. Such an Act which prohibits benami transaction and stops flowing of rights from such transaction which existed earlier, according to the Supreme Court, could not be regarded as a declratory statue. The following observations from the 'Principles of Statutory Interpretation' 5th Edition 1992, by Shri G.P. Singh at page 351 under the caption 'Declaratory Statute' were approved by their Lordships :—

> "The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to common law, or the meaning or effect of any statue. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statues. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word enacted." But the use of the words ' it is declared' is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case wil not necessarily be retrospective. In determining, therefore, the nature of the Act regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this

nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force the amending Act also will be part of the existing law.

In Mithilesh Kumari *v.* Prem Bihari Khare, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for its was not passed to clear any doubt existing as to the common law or the meaning or effect of any statue. The conclusion, however, that Section 4 applies also to past benami transactions may be supportable on the language used in the section."

It is thus obvious that there is a strong presumption against retrospective application of legislation affecting substantive and vested rights unless such laws are considered to be declaratory or procedural in nature.

(25) A similar question was canvassed before the Supreme Court in the case of ***Shyam Sunder and others*** *v.* ***Ram Kumar and another (18)***, In that case Section 15 (as substituted by Haryana Act No. 10 of 1995) of the Punjab Pre-emption Act, 1913 (for brevity, 1913 Act) as applicable to Haryana was the subject matter of dispute. By Haryana Act No. 10 of 1995. Section 15 of 1913 Act was substituted. It is appropriate to mention that the amendment substituting Section 15 of 1913 Act has taken away the right of a co-sharer to pre-empt a sale confining the same to a tenant. It was argued before the Constitution Bench that the appeal being a continuation of the suit, amendment in Section 15 whereby the right of a co-sharer to pre-empt the sale has been taken away during the pendency of the appeal, would affect the maintainability of the suit and the rights of co-sharers. It was further submitted that the Amending Act was retrospective in operation so as to affect the rights of the parties in litigation. Placing reliance on the judgment of a Constitution Bench in Garikapati Veeraya's case *(supra)*: **Daya Wati** versus **Inderjit (19)**, ***Hitender Vishnu Thakur*** versus ***State of Maharashtra*** **(20)** and ***K.S. Paripooran*** versus ***State of Kerala, (21)*** their Lordships of the Constitution Bench held as under :–

"From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by

(18) (2001)8 S.C.C. 24
(19) AIR 1966 S.C. 1423
(20) (1994)4 S.C.C. 620
(21) (1994)5 S.C.C. 593

a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise. We have carefully looked into the new substituted Section 15 brought in the parent Act by the Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may affect the rights of the parties on the date of adjudication of the suit and the same is required to be taken into consideration by the appellate court. In Shanti Devi *v.* Hukum Chand [(1996)5 SCC 768] this Court had occasion to interpret the substituted Section 15 with which we are concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully

in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the rights of the parties which accrued to them on the date of the suit or on the date of passing of the decree by the court of first instance. We are also of the view that the present appeals are unaffected by change in law insofar it related to determination of the substantive rights of the parties and the same the required to be decided in the light of the law of pre-emption as it existed on the date of passing of the decree."

(26) From the principles enunciated by the Constitution Bench in Shyam Sunder's case *(supra)* as well as in R. Rajagopal Reddy's case (supra), it is evident that there is a strong presumption against the retrospective operation of a statute affecting substantive and vested rights unless it is expressly provided or inferred from necessary intendment. Such a view is required to be taken because law is not inclined towards the interpretation that a legislation by retrospective operation could take away substantive and vested rights.

(27) In the present case, the question which arises for consideration is whether the substituted Section 100A should be construed in such a manner as to hold that the letters patent appeals which are pending are not maintainable. It is well settled that the right of appeal is a substantive right and there is a prohibition against raising a presumtion of retrospectivity that substantive rights are intended to be taken away by retrospective effect of legislation. A perusal of Section 100A as substituted by 1999 Act would show that no letters patent appeal was to lie from the original or appellate decree or order of a Single Judge where any writ, order or direction is issued under Articles 226 or 227 of the Constitution. Clause (g) of sub-section (2) of Section 32 protected those letters patent appeals which have already been admitted and were pending for decision. Such letters patent appeals were to be decided as if Section 100A of 1999 Act was not enacted. In other words, in 1999 the legislature in its wisdom preferred to save both types of pending letters patent appeals which were admitted before the enforcement of 1999 Act on the assumption that Section 100A of 1999 Act substituting Section 100A had never come into force.

(28) A perusal of Section 4 of 2002 Act shows that clause (b) of Section 100A substituted by Section 10 of 1999 Act prohibiting the remedy of appeal from the writ, order or direction issued or made by a learned Single Judge on an application under Articles 226 or 227 of the Constitution was omitted. It has been made explicit by Section 4 of 2002 Act that any writ, order or direction issued by a Single Judge of the High Court under Articles 226 or 227 of the Constitution can be challenged before the Letters Patent Bench and such an appeal would be competent. It has further been made clear by Section 15 that clause (g) of sub-section (2) of Section 32 of 1999 Act would stand omitted. Therefore, the intent of the legislature has become absolutely clear that no appeal could be maintained from an original or appellate decree or order passed by a learned Single Judge. It is further evident from 1999 Act and 2002 Act that legislature did not intend to operate substituted Section 100A of 2002 Act retrospectively. It is absolutely misconceived to infer legislative intendment from Clause (g) of sub-section (2) of Section 32 of 1999 Act that only those appeals were intended to be protected which were directed against the order passed by a learned Single Judge on a petition filed under Articles 226 and 227 of the Constitution on the ground that no such protection was accorded to the appeals arising from the judgment and decree passed by the learned Single Judge in an appeal from an original or appellate decree or order. Such a legislative intendment could have possibly been inferred had clause (g) of sub-section (2) of Section 32 of 1999 Act continued to apply and was kept alive. However, the aforementioned provisions itself has been omitted by sub-clause (i) of clause (b) of Section 15 of 2002 Act. Both 1999 Act as well as 2002 Act have been enacted by notification of the same date i.e. 6th June, 2002 and enforced w.e.f. 1st July, 2002. The legislature by omitting those clauses has made its intention explicit. Therefore, necessary intendment as sought to be read by Shri Sarin cannot be considered implicit in view of the express intention. Hence, we have no hesitation in rejecting that argument. The judgment of the Supreme Court in Garikapati Veeraya's case *(supra)* relied upon by Shri Sarin would not, therefore, be attracted to the facts of the present case becuase the principles laid therein could have been applied only, had the legislature by necessary intendment or by express provisions has operated and applied Section 100A of

2002 Act retrospectively. In that case, a Constitution Bench after referring to a large number of earlier judgments of the Supreme Court, Privy Council and various High Courts has formulated the following five propositions :—

> "(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 rights 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 rithts 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 date 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."

(29) The fifth proposition of law on which reliance has been placed by Shri Sarin, cannot be applied in the facts and circumstances of the present case, as to our mind, there is no express provision taking away the vested right of appeal retrospectively nor it could be read by necessary intendment. On the contrary by subsequent enactment of 2002 Act, the legislature has expressly repealed clause (g) of sub-section (2) of Section 32 of 1999 Act.

(30) We are further of the view that Section 6 of 1897 Act has been made applicable by Section 16 of 2002 Act which is a repeal and saving clause. A perusal of clause (c) of Section 6 of 1897 Act would

show that the repeal of an earlier enactment would not result into adversely affecting any right accrued or liability incurred under the enactment so repealed. It is further pertinent to mention that Section 16 starts with the expression notwithstanding that the provisions of this Act have come into force and the earlier Act is repealed is a non-obstante clause which would mean that despite the repeal, the right acquired under the earlier enactment including the right of appeal would be saved. In other words, the vested rights of the parties which have accrued under the unamended provisions would continue to be available to them. Section 6(c) of 1897 Act has been subject matter of controversy in numerous judgments of the Supreme Court. In the case of **Ambala Sarabhai Enterprises Ltd. *v.* Amrit Lal & Co. and another (supra).** The question which fell for consideration of the Supreme Court was whether amendment made in Delhi Rent Control Act, 1958 making the Act inapplicable to tenancies where monthly rent exceeds Rs. 3,500 was applicable to the pending cases." Relying on Section 6(c) of 1897 Act, their Lordships of the Supreme Court observed as under :—

> "The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clsuses Act, Central Act or regulations made after the commencement of the General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no effect over the matters covered in its clauses viz. (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or

punishment as aforesaid. Thus the central theme which spells out is that any investigation or legal proceedings pending may be continued and enforced as if the repealing Act or regulation had not come into force.

As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystalised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the words "any right, privilege, obligation ..... acquired or accrued" under the repealded statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being "acquired" or "accrued" on the date of the repeal would not get protection of Section 6 of the General Clauses Act."

(31) Similar view has been taken by this Court in the case of ***Darshan Kumar and another*** versus ***Raghunandan Sharma*** **(22).** and by the Supreme Court in the case of ***CIT*** versus ***Shah Sadiq & Sons (23).***

(32) The argument of Shri R.S. Mittal that the right of appeal is crystalised on the date of filling a suit would not require any serious consideration because only acquired or vested rights have been given protection and the same cannot be impliedly taken away with retrospective effect. An acquired or vested right would be one which is acquired and enjoyed and it would not include a right which is yet to accrue on some future date. Reference in this regard may be made to cases relating to public services. It is fairly well settled that in cases where a person has already earned promotion, the same cannot be impliedly taken away by subsequent amendment of the statutory rules because it become avested right. A constitution Bench of the

(22) 1978 PLJ 166
(23) (1987)3 S.C.C. 516

Supreme Court in ***S.S. Bola and others*** versus ***B.D. Sardana and others (24),*** while considering the provisions of a Haryana Service of Engineers (Irrigation. Public Health, Buildings and Roads Branch) Act, 1991 held that the rights acquired are the vested rights and those who are promoted already under the unamended rules could not by virtue of amendment be deprived of the promotions and reverted. Similar view was taken by the Supreme Court in ***A.S. Parmar*** versus ***State of Haryana (25) T.R. Kapoor*** versus ***State of Haryana, (26)*** and a Constitution Bench in the case of ***Chairman, Railway Board*** versus ***C.R. Ranagadhamiah (27),*** It is farther advertageous to point out that mere existence of a right to appeal on the date of repeal of a statute cannot be considered a vested right or an accured right. An available right would become vested right only when it is exercised otherwise it would continue to embryological rights. Therefore, the letters patent appeals which have already been filed before 1st July, 2002 are the only appeals which are intended to be protected. The letters patent appeals which are to be filed on or after 1st July, 2002 would not be maintainable because the bar created by Section 100A of 2002 Act would become operational. In other words. Section 100A of 2002 Act would not affect the accured right of appeal vested in a suitor who has actually filed the appeal before 1st July, 2002but those who are yet to file the appeal on or after 1st July, 2002 would not be entitled to maintain the same.

(33) In view of the above discussion, our answer to question No. 1 is in the negative and it is held that no letters patent appeal would lie against the judgment and decree passed by the learned Single Judge arising from an original, appellate decree or an order. Our answer to the second question is that the letters patent appeals filed before 1st July, 2002 would not be dealt with and decided by applying the provisions of Section 100A of 2002 Act.

(34) Having answered the reference on two significant questions, the case be listed before the Letters Patent Bench for deciding the same on merits because the instant letters patent appeal has been held to be maintainable.

S.C.K.

(24) (1997)8 S.C.C. 522
(25) AIR 1986 S.C. 1183
(26) AIR 1987 S.C. 415
(27) (1997)6 S.C.C. 623