

HIGH COURT OF GUJARAT (D.B.)

**AMRITLAL GOKALDAS MEHTA
V/S
STATE OF BOMBAY**

Date of Decision: 06 April 1964

Citation: 1964 LawSuit(Guj) 28

Hon'ble Judges: [N M Miabhoy](#), [J B Mehta](#)

Eq. Citations: 1965 AIR(Guj) 87, 1964 GLR 769, 1964 ILR(Guj) 894

Case Type: Letters Patent Appeal

Case No: 2 of 1960

Head Note:

Appeals from single judge of Saurashtra High Court - Filed in Bombay High Court without permission of judge deciding the appeal - Letters patent Clause 15 and S.22(A) -Distinction thereof - Merger under S.22(A) of ordinance - Whether after merger such permission necessary - S.52 of Reorganisation Act confines Letters patent Jurisdiction to the Bombay Area.

Under clause 15 of the Letters Patent of the High Court of Bombay when a judgment is delivered by a single Judge of the Bombay High Court in a first appeal a Letters Patent Appeal lies without any special leave or certificate from that single Judge. However if the judgment is delivered in a Second Appeal then also a Letters Patent Appeal lies under the same clause but in that case. The certificate of the learned Judge who decides the second appeal is necessary. Under sec. 22A of the Saurashtra High Court Ordinance 1948 no Letters Patent Appeal as such lies because that Court was the creation of a statute and not any Letters Patent. But under sec. 22A of the Ordinance of 1948 a further appeal lies from the judgment of a single Judge whether delivered in a first or second appeal

but in each case the certificate of the learned single Judge who decided the case is necessary. On the contention that in view of sec. 52 of the States Reorganisation Act 1956 the expression appellate jurisdiction in section 52 applies only to the appellate jurisdiction referred to in sec. 21 of the Ordinance and that it does not take within its ambit sec. 22A of the Ordinance and that the proper reading of sec. 52 is that the appellate jurisdiction which the High Court of Saurashtra enjoyed qua the subordinate Courts was only intended to be preserved and that the jurisdiction which was dealt with by sec. 22A of the Ordinance of 1948 was not included in that expression:- HELD that when clause 15 of the Letters Patent jurisdiction provides for an appeal from a judgment of a single Judge it regulates the appellate jurisdiction of the High Court of Bombay and that appellate jurisdiction by the express terms of sec. 52 will remain confined to the Bombay area and will not get extended to the non-Bombay area after the Saurashtra and Kutch areas were amalgamated with the Bombay area and the new State of Bombay was created. (Para 13). That the certificate of the learned Judge who decided the appeal is either a restriction on the right of further appeal or a condition precedent for preferring such an appeal. Whichever view is taken the appeals are incompetent in the absence of certificate from the learned single Judge. The right, which has been given by section 22A of the Ordinance to prefer an appeal from the decrees or orders mentioned therein, is not an absolute right. The right is limited or restricted by the condition that prior to the institution of the appeal a certificate is obtained from the learned Judge who actually decided the first appeal from which the further appeal is sought to be preferred. (Paras 16 17 FURTHER HELD that sec 22A of the High Court of Judicature Ordinance for the State of Saurashtra 1948 provides for appeals from the judgments of a single Judge to a bench consisting of two other Judges of the Saurashtra High Court and regulates the appellate jurisdiction of the Saurashtra High Court. Under the circumstances when sec. 52 of the States re organisation Act 1956 preserved for the High Court of Bombay for the new State original appellate and other jurisdiction of the Saurashtra High Court it preserved not only the jurisdiction embodied in sec. 21 of the Ordinance of 1948 but also the jurisdiction embodied in sec. 22A of the said Ordinance. (Para 6). The Union of India v. The Mohindra Supply Co. referred to. There is a vital distinction between the jurisdiction of a Court and powers exercisable by that Court and when sec. 52 of the Reorganisation Act enacts that the appellate jurisdiction of the High Court of Bombay for the new State of Bombay shall in relation to the Saurashtra area be the same as the jurisdiction which the Saurashtra High Court possessed it means

that the High Court of Bombay has the same jurisdiction which the High Court of Saurashtra had. The latter question is entirely different from the question relating to the powers of the individual Judges or of the Division Benches of the High Court. (Para 7). The jurisdiction, which is referred to in sec. 52, cannot be and is not territorial jurisdiction. Section 52 in terms speaks of original and appellate jurisdiction, which is quite different from territorial jurisdiction. (Para 8). Section 119 of the Reorganisation Act has no application in the interpretation of sees. 49 to 69 of the Act. Having regard to the vital difference in the language used by the Legislature in sections 53 to 58 on the one hand and the language used in sec. 52 on the other hand the intention of the Legislature is unmistakably clear that it intends to preserve intact the law relating to jurisdiction in each of the transferred territories and that it intends to change the law in relation to other matters provided for in secs. 53 to 58. (Para 11). The application of clause 15 Letters Patent jurisdiction of the High Court of Bombay is excluded by the express terms of sec. 52 of the Reorganisation Act 1956 because section 52 is a clear legislative provision indicating that a new jurisdiction was not intended to be given to the High Court of Bombay for the new State in addition to that which the High Court of Saurashtra possessed before the appointed day. (Para 12). Shakuntala and others v. M. B. Jaisoorya and others distinguished.

Acts Referred:

[States Reorganisation Act, 1956 Sec 52](#)

Final Decision: Appeal dismissed

Advocates: [K G Vakharia](#), [M G Sinroja](#), [B K Sompura](#), [D U Shah](#), [S M Shah](#), [J R Nanavati](#), [I M Nanavati](#), [K M Chhaya](#), [H C Shah](#), [R C Mankad](#), [M C Shah](#), [B B Thakore](#), [V G Hathi](#), [K M Chhaya](#), [B R Sompura](#), [J R Nanavati](#), [D U Shah](#), [S M Shah](#), [A V Mody](#), [K S Nanavati](#), [K G Vakharia](#), [H K Doshi](#), [V M Udani](#), [D D Vyas](#)

Reference Cases:

[Cases Cited in \(+\): 1](#)

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Judgement Text:-

[1] In this group of six appeals a preliminary objection has been raised for decision. The objection was first raised when Letters Patent Appeal No. 8 of 1960 was called out for hearing. As the objection affected a number of other Letters Patent Appeals we adjourned the appeal and directed that all other Letters Patent Appeals in which the same objection was likely to be raised should be fixed for hearing them together so that the preliminary objection if raised could be decided after hearing all the learned Advocates appearing therein. It is in pursuance of that order that all the above appeals are fixed for hearing the preliminary objection if the same happens to be raised. This judgment will dispose off the preliminary objection which is raised by all the learned Advocates for the respondents in all the appeals.

[2] The preliminary objection is that the present appeals are incompetent without the certificates of the learned Judges of the Bombay High Court from whose judgments the Letters Patent Appeals purpose to have been filed.

[3] The litigation in each of the aforesaid appeals started before the 1 November 1956 in the Saurashtra area. The original suits in Letters Patent Appeals Nos. 2 of 1960 8 of 1960 and 10 of 1960 were all decided before the 1st November 1956. The original suits in the other three Letters Patent Appeals Nos. 9 of 1960 16 of 1960 and 17 of 1960 were decided after the 1st of November 1956. First appeals were preferred from the original decrees in Letters Patent Appeals Nos. 2 of 1960 and 8 of 1960 to the then High Court of Saurashtra. Whilst these first appeals were pending in the High Court of Saurashtra and the original suits in the other cases were pending in their respective Courts The States Reorganisation Act 1956 (hereafter called the Reorganisation Act) was passed. Under that Act the States of Saurashtra and Kutch and parts of some other States were merged and the new State of Bombay was created the High Court of Saurashtra was abolished and the High Court of Bombay was established as the High Court for the new State of Bombay. Under sec. 59 sub-sec (3) the first appeals from which Letters Patent Appeals Nos. 2 of 1960 and 8 of 1960 arise were transferred to the High Court of Bombay. The original suit in Letters Patent Appeal No 10 of 1960 came to be decided before the commencement of the Reorganisation Act and the original suits in the other cases came to be decided after the 31st of October 1956 the date on which the Reorganisation Act commenced. First appeals were filed in the High Court of Bombay at Rajkot from the decisions recorded in those other original suits. Under the rules framed by that High Court for the disposal of its business the first

appeals in all the aforesaid six cases were decided by a single Judge of the High Court of Bombay sitting at Rajkot.

Letters Patent Appeals were filed by appellant or appellants in each case from the decision of that learned single Judge. When all these Letters Patent Appeals were pending in the High Court of Bombay the Bombay Reorganisation Act 1960 was passed and under sec. 28 thereof the present High Court was created and under sec. 37 of the Bombay Re-organisation Act 1960 all the aforesaid Letters Patent Appeals were transferred to this Court for disposal and they were given in this High Court the numbers which they now bear. Each appeal had been taken cognizance of under the letters Patent jurisdiction of the High Court of Bombay derived by that Court from clause 15 of its Letters Patent. Under that clause an appeal lies from a judgment of a single Judge to the High Court of Bombay without certificate from the learned Judge who decides the first appeal. The objection which is raised on behalf of the respondents in each of the aforesaid Letters Patent Appeals lies under clause 15 of the Letters Patent but that an appeal lies in each case only under sec. 22A of The High Court of Judicature Ordinance for the State of Saurashtra 1948 (hereafter called Ordinance of 1948) by which the High Court of Saurashtra was created. That sec. 22A requires that a further appeal from a first appeal shall lie if the Judge who decides the first appeal certifies that the case is fit for further appeal. It is an admitted position that in none of these appeals was a certificate obtained by any of the respective appellants. Therefore the contention is that as all the aforesaid further appeals from the decisions of the learned single Judge could only be under sec. 22A of the Ordinance of 1948 the further appeals were not competent without the necessary certificates and that therefore all the present appeals deserve to be dismissed. That is the question which has been raised for decision in this group of Letters Patent Appeals.

[4] Now in order to understand and appreciate the rival contentions of both the sides it is necessary to mention some of the provisions of the Ordinance of 1948 and the Reorganisation Act. The Ordinance of 1948 established a High Court of Judicature for the State of Saurashtra. Under sec. 21 of the Ordinance of 1948 the High Court of Saurashtra was constituted the highest court of appeal and was given jurisdiction to entertain and dispose of such appeal civil or criminal as it may be empowered to do

under this Ordinance or any enactment in force in the State. Sec. 22A of the Ordinance of 1948 which was introduced by Ordinance No. 5 of 1950 provided in sub-sec. (1) thereof for appeals from decrees and orders passed by a single Judge of the High Court to a Division Bench consisting of two other Judges of the High Court. Sub-sec. (2) of sec. 22A of the Ordinance of 1948 provided for an appeal from a judgment of one Judge of the High Court of Saurashtra in respect of decrees or orders made in exercise of Appellate Jurisdiction to a Bench consisting of two other Judges of the same High Court if the Judge who made the decree or order certifies that the case is a fit one for appeal. After the establishment of the High Court of Saurashtra the State of Saurashtra was constituted a B State under the Constitution of India. Under Article 214 read with Article 238 thereof the High Court of Saurashtra became the High Court of a B State. The result of this was that Part VI of the Constitution with certain modifications mentioned in Article 238 became applicable to the High Court of Saurashtra. Under Article 225 subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by the Constitution the jurisdiction of and the law administered in any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court were to be the same as immediately before the commencement of the Constitution. Therefore it is common ground that even after Saurashtra was constituted a B State and the provisions of Part VI of the Constitution were applied the appellate jurisdiction of the High Court of Saurashtra was regulated by sections 21 and 22A of the Ordinance of 1948 aforesaid. Thereafter the Reorganisation Act of 1956 was passed. Under that Act several new Part A States were created in India one of the States being the new State of Bombay. Under sec. 8 of the Reorganisation Act 1956 the new State of Bombay comprised some parts of the former States of Bombay Madhya Pradesh and Hyderabad and the whole of the States of Saurashtra and Kutch. In sec. 2 clause (i) a new State was defined as a Part A State formed by the provisions of Part II in which sec. 8 occurs. Therefore under the Reorganisation Act 1956 the new State of Bombay is described as a new State. Section 2(d) of the Reorganisation Act 1956 defines a corresponding new State. It says that a corresponding new State means in relation to the old State of Bombay the new State with the same name. The old State of Bombay is designated under sec. 2(g) of the Reorganisation Act as an existing State. That clause defines an existing State as a State specified in the First Schedule to the Constitution at the commencement of the Reorganisation Act. A corresponding State is defined in the same Act in relation to the new State of Bombay as the existing (i. e. now the old) State of Bombay. Sec. 2(h) of the Reorganisation Act defines law as including any enactment ordinance regulation order bye-last rule scheme notification or other instrument having

the force of law in the whole or in any part of the territory of India. From the aforesaid provisions of the Reorganisation Act it is quite clear that the new State of Bombay comprised some parts of the old States of Bombay Madhya Pradesh and Hyderabad and the whole of The States of Saurashtra and Kutch. In section 2(a) appointed day has been defined as the 1st of November 1956 Under sec. 49 of the Reorganisation Act the High Court exercising immediately before the appointed day jurisdiction in relation to the existing State of Bombay is deemed to be the High Court for the new State of Bombay. Section 50 of the same Act abolishes inter alia the High Court of all the existing B States and the Courts of Judicial Commissioners. The effect of this section was so far as the new State of Bombay was concerned that the High Court of Saurashtra and the Judicial Commissioners Court for Kutch were abolished. Section 52 provides for the jurisdiction of the High Courts for the new States including the State of Bombay.

We shall have to read this section in full at a later stage when we consider the rival contentions of the parties in relation to the preliminary objection. Broadly speaking sec. 52 provides that the High Court for a new State shall have in respect of any part of the territories included in that new State of Bombay all such jurisdiction as was exercisable under the law immediately before the 1st of November 1956 in respect of that part of the said territories by any High Court or Judicial Commissioners Court for an existing State. Section 53 provides for the power of the High Court to approve admit enrol remove and suspend advocates and attorneys and to make rules with respect to advocates and attorneys. It enacts that the law governing these matters will be the same as the law in force immediately before the 1st of November 1956 in the High Court for the corresponding State i. e. the old State of Bombay. Section 54 provides for the practice and procedure of the High Court for the new State. Section 55 provides for the custody of the seal and sec. 56 provides for forms of writs and other processes of the High Court. Section 57 deals with the powers of the Chief Justice the single Judges and Division Courts of the High Court for the new State. That section is important also and we shall have to read it in full when we deal with the rival contentions of the parties on the preliminary objection. As regards all these powers relating to advocates practice and procedure custody of seal and forms of writs and other processes and powers of the Judges the sections say that the law which was applicable to the High Court of Bombay of the old Bombay State shall be the law applicable in regard to those matters to the High Court for the new State. Section 59 sub-sec. (3) provides

for an automatic transfer of all proceedings pending in the High Court of Saurashtra or in the Court of the Judicial Commissioner for Kutch to the High Court of Bombay for the new State. Section 119 of the Reorganisation Act provides for the territorial extent of laws. It enacts that the provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force before the appointed day extended or applied. Section 120 confers powers upon the appropriate Government to make before the expiration of one year from the appointed day such adaptations and modifications of the law as it may deem to be necessary or expedient. The appropriate Government in this section means as respects any law relating to a matter enumerated in the Union List the Central Government and as respects any other law in its application to a Part A State the State Government and in its application to a Part C State the Central Government. In pursuance of the power conferred upon the Central Government by sec. 120 aforesaid The Saurashtra (Adaptation of Laws on Union Subjects) Order 1957 was promulgated by the Central Government. By clause 3 of this Order it was directed that the Ordinance 11 of 1948 shall stand repealed with effect from the 1st of November 1956. The High Court of Bombay for the new State added rules 252-A and 252-B to the Rules of the High Court of Judicature at Bombay Appellate Side 1950 Rule 252-A says that Rules and orders relating to practice and procedure in the High Court in force immediately prior to the appointed day in the High Court of Bombay shall subject to modifications made from time to time thereto apply to the practice and procedure in the High Court . Rule 252 says that Rules and orders relating to practice and procedure in the High Court framed by the High Courts of Nagpur Hyderabad and Saurashtra and Judicial Commissioners Court Kutch shall stand abrogated as from the 1st November 1956 in the areas of the new State of Bombay which before the 1st November 1956 were parts of the States of Madhya Pradesh Hyderabad Saurashtra and Kutch.

[5] Now the argument that sec. 22A of the Ordinance of 1948 applied to all further appeals to the High Court of Bombay and applies to similar appeals to the High Court of Gujarat in cases arising from the territories of the former Saurashtra State and that therefore a certificate of fitness to appeal is necessary in each such case is based upon sec. 52 of the Reorganisation Act of 1956 which is as follows:

"The High Court for a new State shall have, in respect of any part of the territories included in that new State all such original appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioners Court for an existing State".

For the sake of clarity we will analyse the section from the point of view of the jurisdiction of the High Court of Bombay for the new Bombay State. It is crystal clear that the section deals with the question of jurisdiction of the High Court of Bombay for the new State. The jurisdictions which are dealt with are all kinds of jurisdiction-original appellate and otherwise. The question of jurisdiction is dealt with territory-wise. The question of the various jurisdictions is dealt with from the point of view of all the territories comprised in the new State of Bombay. The section means that the jurisdiction of the High Court of Bombay for the new State shall be the same as the jurisdiction which the High Courts or the judicial Commissioners Court had in their respective territories. Thus the law as to jurisdiction of the High Court of Bombay for the new State was crystallized in each of the aforesaid territories in which the former High Courts or the Judicial Commissioners Court exercised the jurisdiction. This is indicated by several matters embodied in the section. The first part of the section refers to any part of the territories included in that new State. The last but one part also emphasizes the same point. The last part of the section clearly refers to the High Courts of Bombay Nagpur Saurashtra and Hyderabad and the Judicial Commissioners Court so far as the State of Bombay is concerned. Thus in respect of the area of the former Bombay State the Bombay High Court got two same jurisdiction which the old High Court of Bombay possessed and in respect of the Saurashtra area the Bombay High Court got the same jurisdiction which the High Court of Saurashtra possessed and in respect of the Kutch area the Bombay High Court got the same jurisdiction which the Judicial Commissioners Court possessed. The jurisdiction was to be regulated with reference to the law which was in force on the appointed day that is on the 1st of Nov. 1956. Having regard to the admitted position as to what the jurisdiction of the High Court of Saurashtra was the appellate jurisdiction of the High Court of Bombay in relation to the Saurashtra area will be the same which the Saurashtra High Court had in that area immediately before the 1st

of November 1956. In other words the appellate jurisdiction of the High Court of Bombay for the new State will be regulated in relation to the Saurashtra area by sections 21 and 22A of the Ordinance of 1948. The repeal of this Ordinance with effect from the 1 of November 1956 by the Saurashtra (Adaptation of Laws on the Union Subjects) Order 1957 will not make any difference because that order repeals that Ordinance with effect from the 1st of November 1956. Section 52 had already crystalized those two sections inasmuch as that section stated that the appellate jurisdiction of the High Court of Bombay for the new State shall be the same as under the law in force immediately before the appointed day. Therefore the object of sec. 52 appears to be to preserve the law relating to all kinds of jurisdiction including original and appellate jurisdiction of the High Court of Saurashtra for the High Court of Bombay for the new State as that law stood immediately before the appointed day in relation to the Saurashtra area. A perusal of sections 52 to 57 discloses that the Legislature has made a clear-cut distinction between the law relating to jurisdiction of the High Court and the other laws such as the power to enrol advocates practice and procedure of the Court the custody of the seal forms of writs and other processes and powers of Judges. In respect of the law as to jurisdiction section 52 has in terms preserved the old law and with respect to the other matters aforesaid the old law has been changed and the law prevailing for the old High Court of Bombay has been by express words extended to the Saurashtra Kutch and other areas merged with the old State of Bombay. Mr. I. M. Nanavati saw the force inherent in the aforesaid distinction and probably therefore he did not contend that the law relating to jurisdiction was not preserved so far as the Saurashtra area was concerned. However Mr. I. M. Nanavati contends that the expression appellate jurisdiction used in sec. 52 of the Reorganisation Act applies only to the appellate jurisdiction referred to in section 21 of the Ordinance of 1948 and that it does not take within its ambit sec. 22A of that Ordinance. Mr. I. M. Nanavatis contention is that the proper reading of section 52 is that the appellate jurisdiction which the High Court of Saurashtra enjoyed qua the subordinate Courts was only intended to be preserved and that the jurisdiction which was dealt with by sec. 22 of the Ordinance, of 1948 was not included in that expression. In fact the argument is that when sec. 22A provides in terms for an appeal from the judgment of a single Judge to a bench of two other Judges it does not in fact provide for an appeal but that it provides only for a review of the judgment of a single Judge

by a bench of two other Judges. It is the validity of this argument which requires to be considered in the first instance.

[6] Now in the first instance we cannot agree that section 22A does not provide for an appeal from the judgment of a single Judge of the Saurashtra High Court and that what section 22A provides for is really a review of the judgment of a single Judge. Section 22A states in terms that an appeal shall lie (1) from an original decree (2) from an order against which an appeal is permitted by any law for the time being in force (3) from an order under Article 226 of the Constitution of India and (4) from a decree or order made in the exercise of the appellate jurisdiction. It says in terms that in each of the aforesaid cases when the decree or order happens to be passed by a single Judge an appeal shall lie to a bench consisting of two other Judges of the Saurashtra High Court and further provides that in the case of a further appeal from an appellate decree or order passed by a single Judge a certificate from that single Judge shall be necessary. The argument of Mr. I. M. Nanavati is really based on the assumption that an appeal contemplates a different forum. His contention is that an appeal postulates superior and inferior Courts and that a proceeding is a proceeding in appeal only when an appeal is permitted from a decree or an order of an inferior Court to its superior Court. His contention is that every High Court is a single Court and that a decree or an order by a single Judge is really a decree or an order of the High Court itself and that therefore when section 22A of the Ordinance of 1948 provides for an appeal from the judgment of a single Judge it cannot be said to provide for an appeal in law but that it provides for a review of the judgment given by a single Judge of the High Court by a bench of two other Judges. The argument is really based on the ground that there cannot be an appeal from a judgment of one Court to the same Court over again. Now in our judgment there is nothing in law which prevents the Legislature from providing for an appeal from a decree or order passed by a Court to the same Court to be determined by a certain number of Judges of that Court. A similar argument came up for consideration before Their Lordships of the Supreme Court in the case of *The Union of India v. The Mohindra Supply Co.* reported in A. I. R. 1962 Supreme Court 256 (at page 259) in connection with the interpretation of section 39 sub-section (1) and sub-section (2) of the Indian Arbitration Act of 1940. The following observations which Their Lordships made in repelling a similar argument are quite apposite and apply to the facts of the present case:

"The Punjab High Court in I.L.R. (1948) E. P. 159 (A.I.R. 1949 E. P. 165)

and the Lahore High Court in A.I.R. 1948 Lahore 64 held that the appeals contemplated by sec. 39 are appeals to superior Courts and not intra-Court appeals and therefore the right to appeal under the Letters Patent was not restricted by sub- Secs. (1) and (2). But a little analysis of this argument is likely to exhibit the somewhat startling consequences. If the appeal contemplated by section 39 is only an appeal to a superior Court orders passed by a subordinate Court decisions whereof are made appealable to the same Court will not be appealable at all under the Arbitration Act. For instance under the Bombay Civil Courts Act certain decisions of Assistant Judges are made appealable to the District Courts. An Assistant Judge is a Judge of the District Court and under the Bombay Civil Courts Act appeals against his orders and decrees in certain cases lie to the District Court. If the argument that an appeal under clause (1) of section 39 means an appeal to a superior Court, be accepted an appeal from an order under section 39 (1) by an Assistant Judge will not lie at all. There are similar provisions in the Civil Courts Act in the other States as well. The qualifying expression to the Court authorised by law to hear appeals from original decrees of the Court passing the order in section 39(1) does not import the concept that the appellate Court must be distinct and separate from the Court passing the order or the decree". It may be interesting to note that the concept of an appeal from the decree or order of a High Court to the same High Court has been recognized by the Legislature by making a provision in Article 117 in the second division of the Indian Limitation Act 1963 Act 36 of 1963. That Article makes a provision for an appeal from a decree or order of any High Court to the same Court. For the above reasons in our judgment section 22A of the Ordinance of 1948 provides for appeals from the judgments of a single Judge to a bench consisting of two other Judges of the Saurashtra High Court and regulates the appellate jurisdiction of the Saurashtra High Court. Under the circumstances when section 52 of the Reorganisation Act preserved for the High Court of Bombay for the new State original appellate and other jurisdiction of the Saurashtra High Court it preserved not only the jurisdiction embodied in section 21 of the Ordinance of 1948 but also the jurisdiction embodied in section 22A of the said Ordinance.

[7] The next ground on which Mr. I. M. Nanavati contends that section 52 of the Reorganisation Act does not apply to the facts of the present case is that the question

falls within the purview of section 57 and not sec. 52 at all. The argument is that the question really relates to the power of a single Judge or a Division Bench of the High Court of Saurashtra and that it does not pertain to the appellate jurisdiction at all. In our judgment there is no merit in this argument either. It is quite clear that section 22A of the Ordinance of 1948 deals with the right of appeal of a litigant. Section 22A in terms confers a right of appeal from the kinds of original or appellate decrees and orders mentioned therein. The right which is conferred on the litigant by the section is from the point of view of the High Court the extent of its authority to entertain and dispose of a proceeding thereunder. The question of exercise of the power of individual Judges or Division Benches of the High Court therein can arise only after an appeal has been entertained that is after the jurisdiction of the High Court is invoked. The question as to whether the High Court is or is not entitled to entertain an appeal does not relate to the question of the power of the individual Judge or of Division Benches of the High Court. Broadly speaking the question as to whether the High Court has jurisdiction that is has authority to entertain an appeal is a question which is determined by the law of the land and as to how and in what manner a proceeding so entertained shall be disposed of is a question relating to the power of the High Court or its components. It is only after the High Court has had its jurisdiction invoked that the question of the exercise of powers by individual Judges or Division Benches thereof can arise. In the present appeals when the first appeals were preferred to the High Court the jurisdiction of the High Court was invoked for remedying the grievance which the appellants had on account of what they alleged to be a wrong decree or order. The rules of the Saurashtra High Court permitted those appeals to be disposed off by a single Judge. That was the power of the single Judge and when the single Judge disposed off the matter then the jurisdiction of the High Court in relation to that first appeal came to an end. Now if any person was aggrieved by a decree or an order passed by a single Judge of the High Court then there was no question of any further exercise of the powers of the same High Court either by a single Judge or by a bench of two or more Judges of the same High Court. The powers had been exercised and had become exhausted in relation to that first appeal. If any person was aggrieved by that appellate order or decree then the first thing which it was necessary for that aggrieved person to do was to invoke the further appellate jurisdiction of the High Court and that he could only do by resorting to sec. 22A of the Ordinance of 1948 and when once that further appellate jurisdiction was invoked then the question of the exercise of the powers of the Judges would again arise but in relation to the further appeal and not the first appeal. Section 22A of the Ordinance of 1948 in terms provides that the power of disposing off such further appeal lies with a bench consisting of two other Judges of the High Court. It is true that in some

cases the expressions jurisdiction and power are used as synonyms. But having regard to the context in which the two words viz. jurisdiction and power have been used in Secs. 52 and 57 of the Reorganisation Act we have no doubt whatsoever that the two words have a distinct meaning and it is only by giving them such distinct meaning that one or the other sections will not be rendered nugatory. It is quite clear that if the word power were to be construed in the sense for which Mr. Nanavati contends then the whole of section 52 of the Reorganisation Act would be rendered nugatory. There is a number of statutes in which the word jurisdiction is used in contradistinction to the word power. For example in the Letters Patent of the Bombay High Court the term jurisdiction is used in relation to the extent of the authority of the High Court in relation to such matters as civil and criminal admiralty and vice-admiralty testamentary and intestate insolvency and matrimonial matters. The term is also used to designate the original and appellate jurisdiction of that Court. The expression power is used in those Letters to designate such things as the power to issue summonses or notices to deliver judgments or to pass decrees or orders in the exercise of the above kinds of jurisdiction. The former relates to the substantive law of the land. The latter relates to practice and procedure. Once the High Court has got jurisdiction over a matter then the question as to how that matter shall be disposed off and by whom is a matter which can be regulated by the High Court by its own rules. Clause 36 of the Letters Patent ordains that any function which is directed to be performed by the Letters Patent by the High Court of Judicature at Bombay may be performed by any Judge or by any Division Court. However it makes it clear that this function is to be exercised in its original or appellate jurisdiction which means that jurisdiction is something different from the power of a single Judge or that of a Division Bench. In Article 225 of the Constitution of India the word power has been used side by side with the word jurisdiction. It is hardly probable that the word power would have been so used if really the word jurisdiction had the same connotation as the word power. In section 23 of the Ordinance 11 of 1948 also the word power has been used. That section enacts that The powers of the High Court may be exercisable by a bench of single Judge as directed by the Chief Justice. It is quite clear from the context that the word power used here is not synonymous with jurisdiction. Under the circumstances we have come to the conclusion that there is a vital distinction between the jurisdiction of a Court and powers exercisable by that Court and when section 52 of the Reorganisation Act enacts that the appellate jurisdiction of the High Court of Bombay for the new State of Bombay shall in relation to the Saurashtra area be the same as the jurisdiction which the Saurashtra High Court possessed it means that the High Court of Bombay has the same jurisdiction which the

High Court of Saurashtra had. The latter question is entirely different from the question relating to the powers of the individual Judges or of the Division Benches of the High Court.

[8] The next contention of Mr. I. M. Nanavati is that section 52 crystallizes the law only with respect to the territorial jurisdiction of the Saurashtra High Court and does not crystallize any other kind of jurisdiction. We cannot agree with this contention also. In our judgment it is sec. 49 of the Reorganisation Act of 1956 which deals with the territorial jurisdiction of the High Court of Bombay for the new State. It is that section which extends the territorial jurisdiction of the High Court of Bombay to the Saurashtra and other areas. That being so the jurisdiction which is referred to in section 52 cannot be and is not territorial jurisdiction. Section 52 in terms speaks of original and appellate jurisdiction which is quite different from territorial jurisdiction. Besides original and appellate jurisdiction the section also speaks of other jurisdictions. The latter expression comprises such other jurisdictions as civil and criminal testamentary and intestate matrimonial divorce insolvency and admiralty which the High Court of Saurashtra possessed under clause (b) of section 4 of the Ordinance 11 of 1948.

[9] Mr. I. M. Nanavati places reliance upon the expression in respect of that part of the territories used twice in section 52 of the Reorganisation Act. He contends that this expression is intended to restrict the jurisdiction to the territory of the High Court and is intended to convey that the other kinds of jurisdiction are excluded. We cannot agree. In our judgment that expression is used in sec. 52 to emphasize that the law relating to the jurisdiction in respect of the transferred territories is preserved intact.

[10] Then Mr. I. M. Nanavati contends that the phraseology used in section 22A of the Ordinance of 1948 is not introduced and is not even referred to in section 52 of the Reorganisation Act and that this indicates section 22A is not preserved. We cannot agree. Section 52 is a general section intended to apply not only to the High Court of Bombay for the new State but also to other High Courts for the other new States which were established under the Reorganisation Act such as the High Courts of Kerala Mysore Madhya Pradesh Rajasthan and Punjab. Therefore the Legislature had per force to use general language which would take in its ambit not only the law in force for the High Court of Saurashtra but also of those other High Courts.

[11] Mr. Nanavati then relies upon the provisions contained in sec. 119 of the Reorganisation Act. He contends that that section is introduced with a view to preserve all the laws prevailing in each of the territories. It is difficult to appreciate as to how this

section can help the contention of Mr. Nanavati. If the argument is that sec. 119 is intended to preserve the law prevailing in the transferred territory then ex hypothesi such would be the intention of the Legislature in relation to the law relating to the jurisdiction of the High Court also. However in our judgment section 119 has no application in the interpretation of sections 49 to 69. Section 119 provides for a fiction in relation to the change of law which may be contended for on account of the provisions contained in Part II of the Reorganisation Act. It does not provide for any fiction in relation to anything enacted in any Part other than Part II. Sections 49 to 69 are all included in Part V. Under the circumstances in our judgment sec. 119 cannot come to the aid of Mr. Nanavati at all. On the contrary as we shall presently show that section runs counter to the contention of Mr. Nanavati. In any case having regard to the vital difference in the language used by the Legislature in sections 53 to 58 on the one hand and the language used in sec. 52 on the other hand the intention of the Legislature is unmistakably clear that it intends to preserve intact the law relating to jurisdiction in each of the transferred territories and that it intends to change the law in relation to other matters provided for in sections 53 to 58

[12] The last argument of Mr. Nanavati is that even if the law regulating the jurisdiction of the Saurashtra High Court crystallized in sec. 52 the jurisdiction conferred on the High Court of Bombay by clause 15 of the Letters Patent is also crystallized under the Reorganisation Act and that the effect of this crystallization is that litigants from the Saurashtra and other transferred areas will have the benefit of that clause along with the litigants from the Bombay area. The contention is that the High Court of Bombay for the new State carries its own charter with it and that that charter will get automatically extended to all the new areas which may happen to be transferred to the High Court of Bombay. In our judgment Mr. I. M. Nanavati's contention is partially correct but not wholly. Mr. I. M. Nanavati is right in contending that the Letters Patent jurisdiction of the High Court of Bombay for the old State is preserved under the States Reorganisation Act. But having regard to the provision contained in sec. 52 and as interpreted by us there is no doubt whatsoever that this jurisdiction is restricted only to the Bombay area. The question however for consideration is as to whether this jurisdiction which before the appointed days was restricted only to the Bombay area got extended to non-Bombay areas as well. Mr. I. M. Nanavati is unable to point out any provision in the States Reorganisation Act which in express terms extends the Letters Patent jurisdiction of the High Court of Bombay to the non-Bombay areas. He is also unable to point out anything in the Reorganisation Act which by necessary implication provides for any such extension. However Mr. I. M. Nanavati contends that there are provisions in the Letters

Patent themselves which show that the jurisdiction conferred by them would get automatically extended to the new areas which may be placed within the jurisdiction of the old High Court of Bombay. In support of this proposition Mr. Nanavati relies upon the decision of *Shakuntala and others v. M. S. Jaisooriya and others* reported in A.I.R. 1961 Andhra Pradesh 390. In that case the question arose for decision as to whether the Letters Patent Appeal lay under Clause 15 of the Letters Patent of the Madras High Court from the decision of a single Judge of the Andhra High Court in a case which arose from a territory which had been transferred to the Andhra Pradesh State under the Reorganisation Act of 1956. A Division Bench of the Andhra Pradesh High Court decided that the Letters Patent appeal did lie. The ratio of the decision is that the necessary consequence of the abolition of the Hyderabad High Court and the extension of the jurisdiction of the old Andhra High Court to the Telangana area was that the Letters Patent clause which governed the appeal in the High Court applied to the Andhra Pradesh High Court also. Their Lordships observed that Clause 15 of the Letters Patent conferred a right of appeal on a party against the judgment of a single Judge of the High Court where leave was granted and that a right of appeal was therefore provided in all cases decided by a Judge of the Andhra Pradesh High Court provided he granted leave. Leave in that case was necessary because the appeal was against the judgment delivered in a second appeal. The learned counsel for the respondent in that case relied upon sections 119 and 120 of the States Reorganisation Act. This argument was repelled by the High Court on the ground that they had no relevancy on the question as to whether an appeal would lie under Clause 15 of the Letters Patent against the judgment of a Judge of the High Court of Andhra Pradesh. Mr. I. M. Nanavati contends that the case was decided under the Reorganisation Act and that therefore it is on all fours with the present case. In our judgment there is a vital distinction between that case and the present case. The case is distinguishable because the scheme in the Reorganisation Act for transferring the Hyderabad territories to the Andhra Pradesh vitally differs from the scheme formulated in the same Act for transferring territories to the new State of Bombay. Sec. 3 of the Reorganisation Act does not create a new State of Andhra Pradesh as sec. 8 creates the new State of Bombay. Sec. 3 only adds to the existing State of Andhra certain territories comprised in certain districts or talukas of the Hyderabad State. It does not create a new State but only alters the name of the State of Andhra to that of the State of Andhra Pradesh. Moreover Part V of the Reorganisation Act which deals with High Courts does not either create a new High Court nor does it by fiction create a new High Court for the State of Andhra Pradesh. Sec. 65 of the Reorganisation Act is the only section which deals with the High Court of Andhra Pradesh and that section provides that as from the appointed

day the jurisdiction of the High Court of the existing State of Andhra shall extend to the whole of the territories transferred to that State from the existing State of Hyderabad. Therefore so far as the Andhra Pradesh High Court is concerned the Reorganisation Act keeps the Andhra High Court intact and extends its jurisdiction to the new territories. Moreover sec. 52 does not apply to the Andhra Pradesh High Court. It is for reasons aforesaid that there is no reference to that section in the case of Shakuntala and others v. M. B. Jaisoorya and others and the non-application of sec. 52 makes a vital difference to the law relating to the jurisdiction of the Andhra Pradesh High Court. A perusal of sec. 65 makes it clear that the High Court of Andhra Pradesh remains intact and extends its jurisdiction to the new territories. The conclusion was reached that the Letters Patent jurisdiction of the Andhra Pradesh High Court extended to the new territories because the Reorganisation Act extended the jurisdiction of the Andhra Pradesh High Court to the new territories and did not preserve the law relating to the jurisdiction of the abolished High Court of Hyderabad which law formerly regulated in that transferred territory the right of further appeal. Because of this difference in scheme sections 53 to 58 also are not applied to the Andhra Pradesh High Court. In our judgment even if there was any scope for the application of the ratio of Shakuntalas case the same must be negated because sec. 52 aforesaid is a clear legislative provision indicating that a new jurisdiction was not intended to be given to the High Court of Bombay for the new State in addition to that which the High Court of Saurashtra possessed before the appointed day. In this connection it is relevant to notice clause 44 of the Letters Patent of the Bombay High Court. That clause ordains that all provisions of the Letters Patent are subject to the legislative powers of the authorities mentioned therein. By enacting sec. 52 the Legislature in clearest terms has provided that the jurisdiction of the Saurashtra High Court is preserved for the Saurashtra area for the Bombay High Court of the new State. Moreover we do not find any justification for Mr. I. M. Nanavatis contention that the Letters Patent necessarily applies to new areas added to the High Court of Bombay. The preamble of the Letters Patent says that the Sovereign constitutes and establishes at Bombay a High Court of Judicature for the Presidency of Bombay. The reference apparently is to the establishment of the High Court under the Act of Parliament (24 and 25 Vict. Chap. 104). Section I of that enactment provides for the erection and establishment of the High Court at Bombay for the Presidency of Bombay. It is not necessary for us to pursue this matter further because even if there is any substance in the aforesaid argument as we have already pointed out the application of Clause 15 Letters Patent jurisdiction of the High Court of Bombay is excluded by the express terms of sec. 52 of the Reorganisation Act.

[13] Mr. I. M. Nanavati further presses into service the same argument based upon the fact that this was an intra-Court appeal in relation to Clause 15 which he had pressed into service in relation to the interpretation of section 22A and which argument we have already rejected. In our judgment Clause 15 makes it still more clear that what is provided therein is a right of appeal from the judgment of a single Judge and not that a review is provided for. The whole scheme of Letters Patent makes it abundantly clear that when a judgment is delivered by a single Judge it is the judgment of the High Court and that an appeal lies from that judgment to the same High Court. Clause 15 of the Letters Patent provides And we do further ordain that an appeal shall lie to the said High Court of Judicature

at Bombay from the judgment.....Of one Judge of the said High Court or one

Judge of any Division Court pursuant to sec. 108 of the Government of India Act and that notwithstanding anything here in before provided an appeal shall lie to the said High Court or one Judge of any Division Court pursuant to section 108 of the Government of India Act. The Letters Patent themselves make a distinction between an appeal and a review For example whereas when dealing with the criminal jurisdiction of the High Court of Bombay it provides for appeals from the decisions of the subordinate Courts it expressly enacts in clause 25 that no appeal to the said High Court of Judicature at Bombay from any sentence or order passed or made in any criminal trial before the Court of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court shall lie The same Clause provides for the reservation of any point or points of law for the opinion of the High Court and Clause 26 ordains that on such point or points being so reserved or certificated by the Advocate General the High Court shall have the full power and authority to review the case. Under the circumstances in our judgment when Clause 15 provides for an appeal from a judgment of a single Judge of regulates the appellate jurisdiction of the High Court of Bombay and that appellate jurisdiction by the express terms of section 52 will remain confined to the Bombay area and will not get extended to the non-Bombay area after the Saurashtra and Kutch areas were amalgamated with the Bombay area and the new State of Bombay was created.

[14] Before we part with this case we may mention the difference between section 22A of the Ordinance of 1948 and Clause 15 of the Letters Patent. Under Clause 15 when a judgment is delivered by a single Judge of the Bombay High Court in a first appeal a Letters Patent Appeal lies without any special leave or certificate from that single Judge. However if the judgment is delivered in a second appeal then also a Letters Patent Appeal lies under the same Clause; but in that case the certificate of the learned Judge who decides the second appeal is necessary. Under the Saurashtra law no Letters Patent Appeal as such lies because that Court was the creation of a statute and not any Letters Patent. But as already stated under section 22A of the Ordinance of 1948 a further appeal lies from the judgment of a single Judge whether delivered in a first or a second appeal but in each case the certificate of the learned single Judge who decides the case is necessary.

[15] Mr. D. U. Shah appearing for some of the appellants raises a few more points His contention is that section 52 of the Reorganisation Act gives jurisdiction to the High Court of Bombay over the Saurashtra area in addition to the jurisdiction which it already possessed and that the latter jurisdiction automatically extends to the new areas transferred to the old State of Bombay. We cannot accept this contention. The correct interpretation of section 52 is that it crystallizes the jurisdiction for each of the areas comprised in the new State of Bombay for the High Court of Bombay. If the Legislature extends the jurisdiction of the High Court of Bombay and also retains the jurisdiction which the abolished High Courts possessed the result will be odd and confusing. There will be conflicts of jurisdiction. Moreover if such was the intention then there was no reason why the Legislature should have made a distinction between the law relating to the jurisdiction of the Bombay High Court and the law relating to the other matters provided in sections 53 to 58.

[16] The next contention of Mr. Shah is that in any case the requirement of the certificate of a single Judge is only a procedural requirement and that the non-obtaining of the certificate is not fatal to the entertainment of the appeals. We are unable to agree with this contention. In our judgment the right which has been given by section 22A of the Ordinance of 1948 to prefer an appeal from the decrees or orders mentioned therein is not an absolute right. The right is limited or restricted by the condition that prior to the institution of the appeal a certificate is obtained from the learned Judge who actually decides the first appeal from which the further appeal is sought to be preferred.

[17] For the aforesaid reasons we have come to the conclusion that though further appeals did lie under section 22A of the Ordinance of 1948 from the judgments delivered in all the aforesaid first appeals the appeals have been wrongly designated as Letters Patent Appeals. All these appeals must be regarded as further appeals under Ordinance 11 of 1948. However all the appeals are incompetent as the necessary certificates were not given by the learned single Judges who decided the first appeals. The certificate is either a restriction on the right of further appeal or a condition precedent for preferring such an appeal. Whichever view is taken the appeals are incompetent in the absence of certificates from the learned single Judge. In the result the preliminary objection will have to be allowed and the present appeals will have to be dismissed on the ground of want of the necessary certificates.

[18] Our conclusion reveals a defect in the administration of justice. The Legislature may have had a good reason for preserving intact the old jurisdiction of the Saurashtra High Court in regard to pending cases. However our conclusion affects cases instituted after the Reorganisation Act came into force. In our judgment there is no reason why the litigants from the Saurashtra and Kutch areas should now be treated on a different footing from the litigants in the old Bombay area. In our judgment the rights of appeal of litigants in all the areas should now be placed on the same footing. We would recommend to the authorities concerned to examine this question and if so advised to undertake the necessary legislation so as to confer the same rights of appeal to the litigants from the Saurashtra and Kutch areas as are given to the litigants from the rest of the State of Gujarat.

[19] Before the above preliminary objection was raised it appears that the view prevailed at the bar that the Letters Patent jurisdiction of the High Court of Bombay applied to the Saurashtra and Kutch areas too. It also appears that the office also did not require the appellants to file the certificates of leave with the memos of appeals. It also appears that all along it was assumed that section 22A of the Ordinance did not apply to further appeals from the judgments in first appeals by single Judges.

[20] Having regard to the above considerations and the fact that the preliminary objection came to be raised at a late stage of the appeals in our judgment the fairest order as to costs will be that each party shall bear its own costs.

[21] The preliminary objection is upheld. All the appeals are dismissed on the ground that they were incompetent without the necessary certificates from the learned Judges who decided the first appeals. Each party will bear its own costs.

Appeals dismissed.

