

A NARENDRA S. CHAVAN & ORS.

v.

VAISHALI V. BHADEKAR
(Civil Appeal No.3371 of 2003)

JULY 21, 2009

B [MARKANDEY KATJU AND V.S. SIRPURKAR, JJ.]

LETTERS PATENT (Bombay High Court):

C *Clause 15 – Letters patent appeal – Maintainability of –*
Tenant after losing before rent control appellate authority filing
writ petition before High court – Writ petition dismissed for non-
prosecution – Application for restoration filed by tenant also
dismissed by order dated 14.6.2002 – Possession of
D premises delivered to landlords – Order dated 14.6.2002
challenged by tenant in letters patent appeal – Division Bench
of High Court deciding the matter on merits, set aside the
E order of rent control appellate authority – Held: The judgment
of Division Bench was without jurisdiction – No letters patent
appeal could have been filed against the order rejecting the
application for restoration as that was not a judgment – Even
otherwise, there was no justification for the Division Bench to
F go into the merits of the matter and all that it could have done
was to remit the matter to the Single Judge for decision on
merits – Even if there was consent of parties, it would not
confer jurisdiction – Accordingly, judgment of Division Bench
set aside – Practice and procedure – Jurisdiction.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3371 of 2003.

G From the Judgment & Order dated 17.8.2002 of the High
Court of Judicature at Bombay in Letter Patent Appeal No. 249
of 2002.

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N.S. Gahlot, R.K. Singh and A.S. Pundir for the Appellants. A

K. Sarada Devi for the Respondents.

The following Order of the Court was delivered

ORDER B

1. This appeal by special leave is directed against the judgment and order dated 17.8. 2002 of the Division Bench of the High Court of Bombay where by the Letters Patent Appeal filed by the respondent-tenant was allowed . C

2. The respondent-tenant after losing before the rent control appellate authority had filed a writ petition, which writ petition also came to be dismissed by order dated 13.3. 2002 for non-prosecution and the civil application filed for restoration of the same was also dismissed by order dated 14.6. 2002. D
Thereafter possession was given to the appellants . Instead of challenging the order dated 14.6. 2002 before a proper court, the respondent-tenant filed a Letters Patent Appeal before the Division Bench. The said Letters Patent Appeal was allowed and while allowing the same, the Division Bench even set aside E
the orders passed by the rent control appellate authority on merits.

3. The learned counsel appearing on behalf of the appellants-landlord herein contends that every thing was without F
jurisdiction . We entirely agree. In fact, after the dismissal of the restoration application by the learned Single Judge, no Letters Patent Appeal could have been filed against that order because that was not a judgment. This is apart from the fact that even assuming that a Letters Patent Appeal was maintainable, there was no justification for the Division Bench G
to go straight into the merits of the matter and all that the Division Bench could have done was to send back the matter to the Single Judge for being decided on merits. That was not done. Instead, the Division Bench went into the merits of the matter. It is stated that this course was adopted because the H

- A parties agreed that the writ petition should be restored to file and should be heard and disposed of on merits . We do not understand as to how the Division Bench had the jurisdiction under Clause XV of the Letters Patent because even if the matter was decided by the Single Judge then the Division
- B Bench would not have had the jurisdiction to decide the matter on merits. Consent does not confer jurisdiction. In that view of the matter, we allow this appeal and set aside the impugned judgment and order of the Division Bench but without any order as to the costs.
- C R.P. Appeal allowed.