"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 117 OF 2005

Videocon International Ltd. … Appellant

versus

Securities & Exchange Board of India … Respondent

J U D G M E N T

Jagdish Singh Khehar, J.

1. The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, the SEBI Act) was enacted to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market. The Securities and Exchange Board of India (hereinafter referred to as, the Board) was vested with statutory powers to effectively deal with all matters relating to the capital market.

2. The functions of the Board have been depicted in Section 11 of the SEBI Act. Under Section 11 of the SEBI Act, the powers of the Board include, the power to suspend the trading of any security in a recognized stock-exchange; the power to restrain from accessing the securities market and prohibit any person associated with the securities market from buying, selling or dealing in securities; the power to suspend any office-bearer of any stock-exchange or self-regulatory organization from holding such position; the power

to impound and retain the proceeds or securities in respect of any transaction which is under investigation; the power to attach after passing of an order on an application made for approval (by the Judicial Magistrate of First Class having jurisdiction) for a period not exceeding one month, one or more bank account(s) of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of the SEBI Act, or the rules/regulations framed thereunder; and the power to direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation. If the Board finds (on investigation), that a person has violated (or is likely to violate) any provision of the SEBI Act, or any rules/regulations made thereunder, the Board is authorized under Section 11D of the SEBI Act, to pass an order requiring the person concerned, to cease and desist from committing or causing such violation.

3. Chapter VIA of the SEBI Act provides for penalties and adjudication. Under Chapter VIA, a penalty can be levied, for failure to furnish information, return or report to the Board (Section 15A, inserted with retrospective effect from 25.1.1995); a penalty can be imposed, for failure by any person to enter into such agreement, as he may be required (Section 15B, inserted with retrospective effect from 25.1.1995); a penalty can also be inflicted, for failure to redress investors' grievances (Section 15C, inserted with retrospective effect from 29.10.2002); a penalty can be foisted, for certain defaults in case of mutual funds (Section 15D, inserted with retrospective effect from 25.1.1995);

a penalty can be levied, for failure to observe rules and regulations by an asset management company (Section 15E, inserted with retrospective effect from 25.1.1995); a penalty can be inflicted, for default in case of stock brokers (Section 15F, inserted with retrospective effect from 25.1.1995); a penalty can be imposed, for insider trading (Section 15G, inserted with retrospective effect from 25.1.1995); a penalty can be demanded, for non-disclosure of acquisition of shares and take-overs (Section 15H, inserted with retrospective effect from 25.1.1995/29.10.2002); a penalty can be levied, for fraudulent and unfair trade practices (Section 15HA, inserted with retrospective effect from 29.10.2002); a penalty can be levied, for contravention, where no separate penalty has been provided (Section 15HB, inserted with retrospective effect from 29.10.2002). Under Section 15-I of the SEBI Act, the Board is mandated to appoint an 'adjudicating officer' (not below the rank of a Division Chief), for deciding the quantum of penalty to be imposed under Sections 15A to 15HB of the SEBI Act.

4. A remedy of appeal to the Securities Appellate Tribunal (established under Section 15K, by insertion of Chapter VIB into the SEBI Act, with retrospective effect from 25.1.1995) was provided for under Section 15T of the SEBI Act, to a person aggrieved of an order passed by the Board, or by an 'adjudicating officer' (for details, refer to the preceding two paragraphs). A further remedy of appeal, was provided from an appellate order passed by the Securities Appellate Tribunal, vide Section 15Z (inserted with retrospective

effect from 15.1.1995). Section 15Z of the SEBI Act (as has been referred to above), is being extracted hereunder:-

> "15Z. Appeal to High Court-
> Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order."
>
> (emphasis is ours)

A perusal of Section 15Z reveals, that when the second appellate remedy was made available to an aggrieved party for the first time, the forum for the second appeal was the High Court. And second appellate remedy was available on questions of fact, as also, questions of law.

5. Section 15Z of the SEBI Act as originally enacted, was amended with retrospective effect, from 29.10.2002. The above amendment to Section 15Z, was brought into force by the Securities and Exchange Board of India (Amendment) Ordinance, 2002. The Ordinance was replaced by the Securities and Exchange Board of India (Amendment) Act, 2002. Section 15Z, as amended is reproduced hereunder:-

> "15Z. Appeal to Supreme Court-
> Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.
>
> Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."
>
> (emphasis is ours)

A perusal of Section 15Z, as amended, reveals that the forum of the second appellate remedy was changed from the High Court, to the Supreme Court. And the second appellate remedy was limited to questions of law alone, and not on questions of fact.

6. Through the present Civil Appeal no. 117 of 2005 (arising out of Special Leave Petition (Civil) no. 3221 of 2004), the appellant has impugned the order passed by the High Court of Judicature at Bombay (hereinafter referred to as, the High Court), on 13.10.2003. The High Court, through the impugned order had examined Section 15Z of the SEBI Act (as amended by the Securities and Exchange Board of India (Amendment) Act, 2002). The issue for determination before the High Court was, whether the aforesaid amendment to Section 15Z of the SEBI Act, would operate prospectively or retrospectively. Appeals had been preferred by the Board, before the High Court assailing the orders passed by the Securities Appellate Tribunal. All the orders under challenge, had been passed by the Securities Appellate Tribunal before 29.10.2002. Some appeals were preferred before 29.10.2002, and one of the appeals was preferred after 29.10.2002. The question which had arisen for adjudication before the High Court was, whether an appeal would lie to the High Court, after the amendment of Section 15Z of the SEBI Act. The Board which had preferred the appeals, asserted, that all the appeals were maintainable. The appellant before us, felt otherwise.

7. The High Court by the impugned order arrived at the conclusion, that such of the appeals as had been filed before the coming into force of the

amended Section 15Z, would not be affected by the amendment, and the High Court had the jurisdiction to hear and dispose of the same. The High Court also concluded, that such of the appeals as had been filed after the coming into force of the amended Section 15Z, would not be maintainable.

8. The instant appeal has arisen with reference to the appeals which have been held as maintainable by the High Court. According to the learned counsel for the appellant, where the repealing Act provides for a new forum (as in the instant case), the original remedy (or legal proceedings) cannot be pursued after the repeal, the remedy before the new forum alone would be available.

9. Insofar as the factual aspect of the present matter is concerned, the impugned order which was assailed before the High Court, under the unamended Section 15Z was disposed of before 29.10.2002. And therefore it was felt, that the remedy available at the time when the impugned order was passed, had to be pursued. Therefore, the pointed question to be determined by this Court, in the present appeal would be, whether an order passed by the Securities Appellate Tribunal before 29.10.2002 would be appealable under the unamended provision of Section 15Z of the SEBI Act before the High Court, or alternatively, whether the same would be appealable under the amended provision of Section 15Z of the SEBI Act before the Supreme Court. And also, whether the date on which the Board had preferred the appeals, was a relevant consideration, in the facts and circumstances of the present case.

10. In order to canvass the proposition which has arisen in the present controversy, learned counsel for the appellant has vehemently contended, that the amendment of Section 15Z, having only brought about a change in the forum, would be deemed to have amended a procedural provision. Accordingly it was the submission of the learned counsel, that the afore-stated amendment would be deemed to be retrospective, specially because no vested right can be deemed to have been taken away. It was also the vehement contention of the learned counsel, that in the absence of a saving clause, the pending proceedings and jurisdiction of the High Court, cannot be deemed to have been saved. It was the contention of the learned counsel, that a case cannot be deemed to have been entertained by a Court, till the Court applies its mind, and as such, even the appeals preferred before the amended Section 15Z took effect retrospectively from 29.10.2002, would be governed by the amended provision, rather than the unamended Section 15Z of the SEBI Act.

11. In order to support his aforesaid contention, learned counsel for the appellant submitted, that Sections 15Y and 15Z of the SEBI Act had to be considered together. Section 15Y is being extracted hereunder:-

> "15Y. Civil court not to have jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."
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> (emphasis is ours)

On the basis of Section 15Y extracted above, it was the submission of the learned counsel for the appellant, that the powers of civil courts to entertain issues emerging out of the provisions of the SEBI Act were expressly taken away. Section 15Y, according to the learned counsel for the appellant, excluded even the jurisdiction of the High Court, with respect to the civil jurisdiction vested in the High Court, in respect of matters entrusted for adjudication, by the SEBI Act, with the adjudicating officer or with the Securities Appellate Tribunal. In fact, according to the learned counsel, the mandate of Section 15Y of the SEBI Act, debarred a civil court from even granting an injunction in respect of any action taken (or to be taken) in pursuance of any power conferred by or under the SEBI Act. It was the contention of the learned counsel, that Section 15Z of the SEBI Act, should be examined in the background of the intent expressed by the legislature through Section 15Y.

12. In conjunction with the above submission, learned counsel for the appellant invited the Court's attention to Sections 27 and 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which are reproduced hereunder:-

> "27. Substitution of new Section for Section 15Z- For Section 15Z of the principal Act, the following section shall be substituted, namely:- "15Z. Appeal to Supreme Court - Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order: Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

> 32. Repeal and Saving-
> 1. The Securities and Exchange Board of India (Amendment) Ordinance, 2002 (Ord. 6 of 2002), is hereby repealed.
> 2. Notwithstanding the repeal of the Securities and Exchange Board of India (Amendment) Ordinance, 2002 (Ord. 6 of 2002), anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act."

(emphasis is ours)

Drawing the Court's attention to Section 32, the contention of the learned counsel for the appellant was, that in the absence of any saving clause, which may have had the effect of preserving, protecting, securing or sustaining the jurisdiction vested in respect of appeals pending before the High Court, all the pending appeals would have to be adjudicated by the substituted forum, after the amendment of Section 15Z of the SEBI Act. On the instant score, the further submission of the learned counsel was, that whilst amendment to procedure had generally retrospective effect, an amendment to a provision vesting a substantive right was generally prospective.

13. In order to support his contentions, learned counsel for the appellant, placed reliance on the decision in Colonial Sugar Refining Co. Ltd. v. Irving, 1905 AC 369. In the judgment relied upon, a right of appeal was available from the Supreme Court of Queensland, to the King in Council. The aforesaid right was taken away by the Australian Commonwealth Judiciary Act, 1903 (hereinafter referred to as, the 1903 Act). Section 39(2) of the 1903 Act, provided for an appeal from the Supreme Court of Queensland, to the High Court of Australia. The question which arose for determination was, whether from a suit pending when the 1903 Act was enacted, a remedy of appeal

would lie before the King in Council or before the High Court of Australia. In the judgment relied upon, the Privy Council held as under:-

> "As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as the right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."
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> (emphasis is ours)

14. Learned counsel for the appellant pointed out, that the decision rendered by the Privy Council in Colonial Sugar Refining Co. Ltd. case (supra) was followed by this Court in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh, AIR 1953 SC 221. The issue which came up for consideration in Hoosein Kasam Dada (India) Ltd. case (supra) was in respect of the return filed by the appellant under the Berar Sales Tax Act, 1947 (hereinafter referred to as, the 1947 Act). The 1947 Act was amended, requiring the payment of the entire assessed amount, as a condition precedent, to the admission of an appeal. The Assistant Commissioner to whom the return was transferred for disposal, made an assessment, against

which the appellant preferred an appeal, without depositing the assessed tax. The Board of Revenue was of the view, that Section 22(1) of the 1947 Act as amended, applied to the case, as the assessment was made, and the appeal had been preferred, after the amendment came into force. The appeal accordingly came to be rejected. In further appeal, this Court following the decision of the Privy Council in Colonial Sugar Refining Co. Ltd. case (supra), as well as certain other decisions held, that a right of appeal was not merely a matter of procedure. An appellate remedy, it was held, was a substantive right. The right of appeal from the decision of an inferior Tribunal, becomes vested in a party, when proceedings were first initiated before an inferior Court. Such a vested right, it was held, could not be taken away except by an express enactment or by necessary intendment. Accordingly, it was concluded, that the earlier provision which created the right of appeal, would continue to apply. The unamended provision was held, to govern the exercise and enforcement of the right of an appeal. It is thus concluded, that there could be no question of the amended provision divesting the aggrieved party of its right to appeal.

15. Eventually, the above proposition of law, according to learned counsel, came to be crystallized by the Constitution Bench judgment in Garikapati Veeraya v. N. Subbiah Choudhary, AIR 1957 SC 540, wherein this Court recorded its conclusions in paragraph 23, which is being extracted hereunder:-

> "23. From the decisions cited above the following principle clearly emerge :

(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 right 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 rights of appeal then in force are preserved to the parties there to 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."

(emphasis is ours)

The aforesaid conclusions, came to be applied in Garikapati Veeraya's case (supra), as is apparent from an extract of the judgment, which is being reproduced hereunder:-

"24. In the case before us the suit was instituted on April 22, 1949, and on the principles established by the decisions referred to above the right of appeal vested in the parties thereto at that date and is to be governed by the law as it prevailed on that date, that is to say, on that date the parties acquired the right, if unsuccessful, to go up in appeal from the sub-court to the High Court and from the High Court to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, 1947 read with Cl. 39 of the Letters Patent and Ss. 109 and 110 of the Code of Civil Procedure provided the conditions thereof were satisfied. The question for our consideration is whether that right has been taken away expressly or by necessary intendment by any subsequent enactment. That respondents to the application maintain that it has been so taken away by the provisions of our Constitution."

In continuation with the conclusions drawn hereinabove, learned counsel for the appellant placed reliance on Jose Da Costa v. Bascora Sadasiva Sinai Narcornim, (1976) 2 SCC 917, specially, the following observations recorded therein:-

> "31. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that "while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" (see Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commissioner, AIR 1927 PC 242.
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> The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the application of this rule, viz, (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see Garikapatti Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540, and Colonial Sugar Refining Co. Ltd. v. Irving, 1905 AC 369.
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> 32. In the light of the above principles, these points arise for consideration: Are the provisions of the Portuguese Civil Code relating to reclamacao merely matters of procedure? Or, do they create or affect vested rights and remedies? That is to say, does a reclamacao have all the attributes of a substantive right of appeal existing at the commencement of the suit? Did the superior Court of Appeal at Lisbon stand abolished as an appellate forum in relation to Goa, Daman and Diu from December 20, 1962? If so, what is its effect on the right of appeal given by Articles 677 and 722 of the Portuguese Civil Code and their application to the present case? Was the Portuguese Supreme Court at Lisbon succeeded by the Supreme Court of India for the purpose of the aforesaid Articles 677 and 722 of the Portuguese Code? If so, did this position hold good after June 15, 1966? Does the Central Act 30 of 1965 read with Notification No. S.O. 1597, issued thereunder, expressly or impliedly, make inapplicable the provisions of the Portuguese Civil Code in the matter of reclamacao in respect of a

> decision or Judgment rendered by the Court of Judicial Commissioner after June 15, 1966? That is to say, have the rights, remedies or obligations arising out of the Portuguese Law relating to reclamacao been saved by any of the Clauses (a), (b) or (c) of the first Proviso to Section 4(1) of Act 30 of 1966?
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> 33. It may be noted that while a right of appeal from court to court is a substantive right which under the then law, exists on and from the date of the institution of the suit, the same cannot be said with regard to reclamacao. The provisions of the Portuguese Civil Code relating to reclamacao lay down only special rules of procedure which have to be gone through before a litigant is entitled to raise in appeal a material point left undecided by the lower court. The object of requiring a party aggrieved by a 'nullity' is to save the time of the appellate Court by precluding a party to reagitate in appeal pleas that had been left undecided by the lower court. It also minimizes the necessity of remands to the lower court for trial of particular issues and thus shortens litigation. The requirement or obligation to file a reclamacao is not an obligation in esse or/and from the institution of the suit. Nor is the procedural right to file reclamacao-if at all it can be called a 'right'- a vested right existing from the date of the suit. The filing of a reclamacao is dependent upon the happening of an uncertain event. It arises only when a Judgment suffering from a 'nullity' is passed. Such a contingency may or may not arise. On the other hand in the case of a suit it can be predicated that it would normally result in a decree entitling the aggrieved party to have the suit reheard and redecided in a higher forum by filing an appeal provided of course such a right is available under the law prevailing at the institution of the suit.
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> 34. In the present case, the Judgment of the Additional Judicial Commissioner in which the alleged "nullity" or "omission to adjudicate" on the point of prescription occurs was delivered on January 20, 1968, that is, long after the extension of Articles 132, 133 and 134 of the Constitution, rules framed under Article 145 of the Constitution and Sections 109 and 116 of the Code of Civil Procedure to Goa, Daman and Diu. The procedural provisions of the Portuguese Code relating to reclamacao, and appeal from a decision on reclamacao, from the High Court in Goa, Daman and Diu stood repealed and superseded by the extended Indian laws when the Judgment now under appeal was rendered."

On the instant proposition, learned counsel for the appellant last of all, placed reliance on Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24, wherein after

relying on the conclusions drawn by this Court in Dayawati v. Inderjit, AIR 1966 SC 1423, and Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, as also, on K.S. Paripoornan v. State of Kerala, (1994) 5 SCC 593, and noticing extracts therefrom, in paragraphs 25, 26 and 27 respectively, this Court recorded its conclusions in paragraph 28. Paragraphs 25 to 28 are accordingly being extracted hereunder:-

> "25. In Dayawati v. Inderjit, AIR 1966 SC 1423, it is held thus:
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> > "10. Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law., brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim - a new law ought to be prospective, not retrospective in its operation - is oft-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But is does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance."
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> 26. In Hitendra Vishnu Tahkur v. State of Maharashtra, (1994) 4 SCC 602, this Court laid down the ambit and scope of an amending act and its retrospective option as follows:
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> > "(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) a procedural statute should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication."

27. In K.S. Paripoornan v. State of Kerala, (1994) 5 SCC 593, this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

"67. In the instant case we are concerned with the application of the provisions of sub-section (1-A) of Section 23 as introduced by the Amending Act to acquisition proceedings which were pending on the date of commencement of the Amending act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to the determined by the law as it existed when the action was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922)".

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of 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 effect 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 statue 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 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 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 effect the right of the parties which accrued to them on the date of suit or on the date of passing of the decree by the Court of first instance. We are also of the view that present appeals are unaffected by change in law insofar it related to determination of the substantive rights of the parties and the same are required to be decided in light of law of pre-emption as it existed on the date of passing of the decree."
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> (emphasis is ours)

16. Learned counsel for the appellant, however pointed out, that the conclusions drawn by this Court, on the issue of prospectivity and retrospectivity, with reference to substantive rights and procedural provisions, fully support the appellants' prayers in the instant appeal, for the simple reason, that the amendment to Section 15Z of the SEBI Act does not deprive

the appellant, of the right to second appeal. In this behalf it was submitted, that the right of first appeal is before the Securities Appellate Tribunal, whereas, the right to second appeal was before the High Court, prior to the amendment under consideration. Consequent upon the amendment of Section 15Z (with effect from 29.10.2002), the right to second appeal, which earlier lay before the High Court, has now been vested with the Supreme Court. According to learned counsel the right of second appeal, which was a vested substantive right, remains preserved, even after the amendment. It was therefore pointed out, that only the forum of the second appeal, had been altered, from the High Court (where it lay, under the unamended provision) to the Supreme Court of India (where it now lies, after the amendment). It was contended, that whilst the right of second appeal was a vested substantive right; the forum before which an appeal lies had a procedural perspective, and had no similar connotation.

17. In support of his above submission, learned counsel for the appellant, in the first instance, placed reliance on Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92 and invited our attention to the following observations recorded therein:-

> "5. On the question as to where the appeal could be lodged we are clearly of the view that the forum was governed by the provisions of the Goa, Daman and Diu (Extension of Code of Civil Procedure, 1908 and Arbitration Act, 1940) Act, 1965 (Central Act XXX of 1965) read with the provisions of the Goa, Daman & Diu Civil Court Act, 1965 (Goa Act XVI of 1965) both of which came into force simultaneously on June 15, 1966 and the appeal was required to be filed in the Judicial Commissioner's Court. Under the Central Act XXX of 1965 with effect from June 15, 1966 the provisions of the Indian Civil Procedure Code were extended to the Union Territories of Goa,

Daman and Diu and the corresponding provisions of the Portuguese Code were repealed while under the Goa Act XVI of 1965 the instant suit which was pending before the Comarca Court at Margao was continued and decreed by corresponding Court of the Senior Civil Judge, who ultimately decreed it on March 8, 1968. Under the Indian Civil Procedure Code read with Section 22 of the Goa Act since the property involved in the suit was of the value exceeding Rs.10,000/- the appeal clearly lay to the Judicial Commissioner's Court. The contention that since the right of appeal had been conferred by Portuguese Code, the forum where it could be lodged was also governed by the Portuguese Code cannot be accepted. It is no doubt well-settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced in the Court of the first instance, and such right or any remedy in respect thereof will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof. This position has been made clear by Clauses (b) and (c) of the proviso to Section 4 of the Central Act XXX of 1965 which substantially correspond to Clauses (c) and (e) of Section 6 of the General Clauses Act, 1897. This position has also been settled by the decisions of the Privy Council and this Court (vide the Colonial Sugar Refining Company Ltd. v. Irving, 1905 AC 369 and Garikapatti Veeraya v. N. Subbiah Choudhury, (1957) 1 SCR 488, but the forum where such appeal can be lodged is indubitably a procedural matter and, therefore, the appeal, the right to which has arisen under a repealed the Act, will have to be lodged in a forum provided for by the repealing Act. That the forum of appeal, and also the limitation for it, are matters pertaining to procedural law will be clear from the following passage appearing at page 462 of Salmond's Jurisprudence (12th Edn.):

> Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the courts fulfill their functions.

It is true that under Clause (c) of the proviso to Section 4 of Central Act XXX of 1965 (which corresponds to Section 6(e) of the General Clauses Act, 1897) it is provided that a remedy or legal proceeding in respect of a vested right like a right to an appeal may be instituted, continued or enforced as if this Act (meaning the repealing Act) had not been passed. But this provision merely saves the remedy or legal proceeding in respect of such vested right which it is open to the litigant to adopt notwithstanding the repeal but this provision has

nothing to do with the forum where the remedy or legal proceeding has to be pursued. If the repealing Act provides new forum where the remedy or the legal proceeding in respect of such vested right can be pursued after the repeal, the forum must be as provided in the repealing Act. We may point, out that such a view of Section 6(e) of the General Clauses Act, 1897 has been taken by the Rajasthan High Court in the case of Purshotam Singh v. Narain Singh and State of Rajasthan, AIR 1955 Raj. 203. It is thus clear that under the repealing enactment (Act XXX of 1965) read with Goa Enactment (Act XVI of 1965) the appeal lay to the judicial Commissioner's Court and the same was accordingly filed in the proper Court."

On the same proposition, and to the same effect, learned counsel placed reliance on Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, and invited our attention to the following conclusions recorded therein:-

"25. We have already noticed that Clause (b) of Sub-section (4) of Section 20 was amended by the Amendment Act No. 43 of 1993 with effect from 22.5.1993. Besides, reducing the maximum period during which an accused under TADA could be kept in custody pending investigation from one year to 180 days, the Amendment Act also introduced Clause (bb) to Sub-section (4) of Section 20 enabling the prosecution to seek extension of time for completion of the investigation. Does the Amendment Act No. 43 of 1993 have retrospective operation and does the amendment apply to the cases which were pending investigation on the date when the Amendment Act came into force? There may be cases where on 22.5.1993, the period of 180 days had already expired but the period of one year was not yet over. In such a case, the argument of learned Counsel for the appellant is that the Act operates retrospectively and applies to pending cases and therefore the accused should be forthwith released on bail if he is willing to be so released and is prepared to furnish the bail bonds as directed by the court, an argument which is seriously contested by the respondents.

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases, the illustrative though not exhaustive, principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

> (i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.
>
> (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.
>
> (iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.
>
> (iv) A procedural Statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.
>
> (v) A Statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.
>
> (emphasis is ours)

In this behalf, reliance was also placed on Thirumalai Chemicals Ltd. v. Union of India, (2011) 6 SCC 739 and our attention was invited to the following observations recorded therein:-

> "24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.
>
> 25. Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to few of those decisions. This Court in Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540, New India Insurance Company Limited v. Shanti Mishra, (1975) 2 SCC 840, Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, Maharaja Chintamani Saran Nath

> Shahdeo v. State of Bihar, (1999) 8 SCC 16, and Shyam Sundar v. Ram Kumar, (2001) 8 SCC 24, has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that every litigant has a vested right in substantive law but no such right exists in procedural law. This Court has held that the law relating to forum and limitation is procedural in nature whereas law relating to right of appeal even though remedial is substantive in nature.
>
> 26. Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective and a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective."
>
> (emphasis is ours)

Based on the aforesaid determination of this Court, it was the contention of the learned counsel for the appellant, that the amendment of Section 15Z of the SEBI Act, whereby the appellate forum was changed from the High Court to the Supreme Court, would necessarily have to be treated as a procedural amendment. Having so inferred, it was the contention of the learned counsel, based on the judgments referred to above, that the amendment under reference, was liable to be treated as procedural. And as such, the amendment to Section 15Z had to be treated as if, the same was a part of the SEBI Act from the very beginning.

18. We have recorded hereinabove, the submissions advanced on behalf of the appellant. We shall record hereinafter, the response of the learned counsel for the respondent.

19. While responding to the submissions advanced at the hands of the learned counsel for the appellant, learned counsel for the respondent was satisfied, in merely relying upon judicial precedent, to contest the submissions

advanced at the hands of the learned counsel for the appellant. It is therefore, that we will hereinafter systematically narrate the judgments referred to by the learned counsel for the respondent.

20. First of all, learned counsel placed reliance on Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp.(1) SCC 257. In the above judgment, the respondent, an individual assessee, had filed a return of his income for the years 1968-69 and 1969-70. The Income Tax Officer assessed the income of the respondent manifold higher, than what was depicted in the income tax return. After the assessment order was passed, the matter was referred to the Inspecting Assistant Commissioner under Section 274(2) of the Income Tax Act, 1961, for imposing a penalty under Section 271(1)(c). During the pendency of the above reference, Section 274(2) was amended with effect from 1.4.1971. The Orissa High Court arrived at the conclusion, that by virtue of the amendment to Section 274(2) of the Income Tax Act, 1961, the Inspecting Assistant Commissioner, was no longer competent to impose the penalty. This Court, while setting aside the order passed by the High Court, inter alia observed as under:

> "18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings, from the court or the Tribunal where they are pending to the court or the Tribunal which under the new law gets jurisdiction to try them.
>
> 19. Section 274(2) as it stood prior to April 1, 1971 required the Income-tax Officer to refer the case to Inspecting Assistant Commissioner if the minimum penalty imposable exceeded Rs.l,000.00. The Inspecting Assistant Commissioner on a reference made by the Income-tax Officer

got jurisdiction to impose penalty in such cases. The jurisdiction on Inspecting Assistant Commissioner was conferred by virtue of the reference. The reference was validly made by the Income-tax Officer before April 1, 1971. The question is did the amendment to Section 274 divest the Inspecting Assistant Commissioner of his validly acquired jurisdiction or the amendment ousted his jurisdiction merely because the amount of concealed income did not exceed Rs. 25,000.00 and the case did not satisfy the requirement of Section 274(2) as amended.

20. It will be noticed that the Amending Act did not make any provision that the references validly pending before the Inspecting Assisting Commissioner shall be returned without passing any final order if the amount of income in respect of which the particulars have been concealed did not exceed Rs.25,000.00. This supports the inference that in pending references the Inspecting Assistant Commissioner continued to have jurisdiction to impose penalty. The previous operation of Section 274(2) as it stood before April 1, 1971, and anything done thereunder continued to have effect under Section 6(b) of the General Clauses Act, 1897, enabling the Inspecting Assistant Commissioner to pass orders imposing penalty in pending references. In our opinion, therefore, what is material to be seen is as to when the references were initiated. If the reference was made before April 1, 1971, it would be governed by Section 274(2) as it stood before that date and Inspecting Assistant Commissioner would have jurisdiction to pass the order of penalty.

21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the Tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different Tribunals or forums.

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25. In Manujendra Dutt v. Purmedu Prosad Roy Chowdhury, AIR 1967 SC 1419, this Court considered the effect of the deletion of Section 29 of the Calcutta Thika Tenancy Act, 1949, by the Calcutta Thika Tenancy (Amendment) Act, 1953 in the context of the pending action. The suit for ejectment against a tenant was instituted in a civil court in 1947. In view of Section 29 of the Thika Tenancy Act, 1949, the suit was transferred to the Controller. During the pendency of the suit before the Controller,

> Section 29 was deleted by the Amending Act. The question that arose was whether by deletion of Section 29 the jurisdiction of the Controller over a pending suit was taken away. It was held by this Court that the deletion of Section 29 did not deprive the Controller of his jurisdiction to try the suit pending before him on the date when the Amending Act came into force. It was pointed out that though the Amending Act did not contain the saving clause the savings contained in Section 8 of the Bengal General Clauses Act, 1899, corresponding to Section 6 of the Central Act, applied and the transfer of the suit having been lawfully made under Section 29 of the Act, its deletion by the Amending Act, did not affect its previous operation or anything duly done thereunder. Similarly, in Mohd. Idris v. Sat Narain, AIR 1966 SC 1499, the question was whether the Munsif who was trying a suit under the U.P. Agriculturists Relief Act ceased to have jurisdiction after the passing of the U.P. Zamindari Abolition and Land Reforms (Amendment) Act, 1953, which conferred jurisdiction on the Assistant Collector. This Court held that the jurisdiction of the Assistant Collector was itself created by the Abolition Act and as there was no provision in that Act that the pending cases, were to stand transferred to the Assistant Collector for disposal, the Munsif continued to have jurisdiction to try the suit. It was observed that the provisions for change-over of proceedings from one court to another are commonly found in a statute which takes away the jurisdiction of one court and confers it to the other in pending actions.
>
> 26. Surely the Amending Act does not show that the pending proceedings before the court on reference abate.
>
> 27. We are thus of the considered view that the advisory opinion given by the High Court to the question referred to it was wrong and the answer should be in favour of the appellant and it is held that the Inspecting Assistant Commissioner to whom the case was referred prior to April 1, 1971 had jurisdiction to impose the penalty. The view expressed by the Allahabad High Court in CIT v. Om Sons, [1979] 116 ITR 215 (All), and the Karnataka High Court in CIT v. M.Y. Chandragi, [1981] 128 ITR 256 (KAR), does not, therefore, lay down the correct law."
>
> (emphasis is ours)

According to learned counsel, a perusal of the above judgment revealed, that change of forum could be substantive or procedural. It would be procedural when the remedy has yet to be availed of. But where the remedy had already been availed of (under an existing statutory provision), the right crystallized

into a vested substantive right. In the latter situation, according to learned counsel, unless the amending provision, by express words or by necessary implication mandates, the transfer of pending proceedings to the forum introduced by the amendment, the forum postulated by the unamended provision, has the jurisdiction to adjudicate upon pending matters (filed before the amendment).

21. According to learned counsel, his submission also flows from the mandate contained in Section 6 of the General Clauses Act, 1897. For this, learned counsel placed reliance on Ambalal Sarabhai Enterprises Limited v. Amrit Lal and Co., (2001) 8 SCC 397. In the above cited judgment, the respondent-landlord had filed an eviction petition on 13.9.1985 against the appellant, under Section 14(1)(b) of the Delhi Rent Control Act. When the above petition was pending, Section 3(c) was brought in through an amendment with effect from 1.12.1988. By the above amendment, the jurisdiction of the Rent Controller, with respect to tenancies which fetched a monthly rent exceeding Rs.3,500/-, was excluded. Consequent upon the aforesaid amendment, the appellant-tenant contended, that the civil court alone, had the jurisdiction to entertain the claim raised by the landlord, and that, the eviction petition filed under the provisions of the Delhi Rent Control Act, was no longer maintainable. While adjudicating the aforesaid dispute, this Court held as under:

> "24. We may quote here Section 6 of the General Clauses Act, 1897:
>
> "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."

25. The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clauses Act, Central Act or Regulations made after the commencement of 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 affect over the matters covered in its sub-clauses, viz., (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or effect 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 proceeding pending may be continued and enforced as if the repealing Act or Regulation had not come into force.

26. 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 effect 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 crystallised 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 repealed 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.

27. At the most, such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the Statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner prescribed under the statute. On filing the petition of eviction of the tenant the privilege accrued with the landlord is not effected by repeal of the Act in view of section 6(c) and the pending proceeding is saved under Section 6(e) of the Act.

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34. Thus we find Section 6 of the General Clauses Act covers a wider filed and saves a wide range or proceedings referred to in its various sub-clauses. We find two sets of cases, one where Section 6 of the General Clauses Act is applicable and the other where it is not applicable.

35. In cases where Section 6 is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various sub-clauses from (a) to (e) of Section 6. We have already clarified right and privileges under it is limited to those which is 'acquired' and 'accrued'. In such cases pending proceedings is to be continued as if the statute has not been repealed.

36. In view of the aforesaid legal principle emerging, we come to the conclusion that since proceeding for the eviction of the tenant was pending when the repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case, as it is Landlord's accrued right in terms of Section 6. Clause (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words 'any right accrued' in Section 6(c) are wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by

> the repealing statue and will be continued and concluded in accordance with the law as existed under the repealed statute."
>
> (emphasis is ours)

Based on the above determination, it was the contention of the learned counsel, that in addition to the existence of a vested right, Section 6(c) and (e) make it abundantly clear, that a pending legal proceeding or remedy, before the amendment altered the forum, would continue to be available for the adjudication of the matter, unless the amending provision by express words or by necessary implication expressed otherwise.

22. Reliance was thereafter placed by learned counsel, on M/s. Hoosein Kasam Dada (India) v. State of Madhya Pradesh, AIR 1953 SC 221. The question, which arose for consideration in the cited case was, with reference to the maintainability of an appeal preferred by the appellant, under Section 22(1) of the Central Provinces of Berar Sales Tax Act, 1947, to the Sales Tax Commissioner, Madhya Pradesh, against an assessment order passed by the Assistant Commissioner. Since the appellant did not attach to the appeal any proof of payment of tax in respect of which the appeal had been preferred, the authorities declined to admit the appeal. The aforesaid determination by the Sales Tax Commissioner, was assailed before the Board of Revenue, Madhya Pradesh. It was sought to be asserted during the course of the aforesaid appellate proceedings, that the appeal preferred by the appellant would be governed by the proviso to Section 22(1) of the above mentioned Act, as it stood when the assessment proceedings were initiated (i.e., before the amendment to the proviso to Section 22(1) aforementioned). The Board of

Revenue took the view, that the order of assessment was made after the amendment to the aforesaid provision, and accordingly, the appeal would be governed by the amended provision. It was also concluded, that the law as it existed before the filing of the appeal, would not apply to the case. The aforesaid determination was assailed by the appellant, before the High Court of Madhya Pradesh, which dismissed the contention of the appellant. It is therefore that the appellant approached this Court. On the subject referred to hereinabove, this Court observed as under:

> "4. The principle of the above decision was applied by Jenkins C.J. in Nana v. Sheku, 32 Bom. 337(B), and by the Privy Council itself in Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commissioner, Delhi, AIR 1927 PC 242 (C). A Full Bench of the Lahore High Court adopted it in Kirpa Singh v. Rasalldar Ajaipal Singh, AIR 1928 Lah. 627 (FB) (D). It was there regarded as settled that the right of appeal was not a mere matter of procedure but was vested right which inhered in a party from the commencement of the action in the Court of first instance and such right could not be taken away except by an express provision or by necessary implication.
>
> 5. In Sardar Ali v. Dolimuddin, AIR 1928 Cal. 640 (FB) (E), the suit out of which the appeal arose was filed in the Munsiff's Court at Alipore on the 7.10.1920. The suit having been dismissed on the 17.7.1924, the plaintiffs appealed to the Court of the District Judge but the appeal was dismissed. The plaintiffs then preferred a second appeal to the High Court on the 4.10.1926. That second appeal was heard by a Single Judge and was dismissed on the 4.4.1928. In the meantime Cl. 15 of the Letters Patent was amended on the 14.1.1928 so as to provide that no further appeal should lie from the decision of a Single Judge sitting in second appeal unless the Judge certified that the case was a fit one for appeal. In this case the learned Judge who dismissed the second appeal on the 4.4.1928, declined to give any certificate of fitness. The plaintiffs on the 30.4.1928, filed an appeal on the strength of Cl. 15 of the Letters Patent as it stood before the amendment. The contention of the appellants was that the amended clause could not be applied to that appeal, for to do so would be to apply it retrospectively and to impair and indeed to defeat a substantive right which was in existence prior to the date of the amendment. The appellants claimed that on the 7.10.1920, when the suit was filed they had vested in them by the

existing law a substantive right to Letters Patent appeal from the decision of a Single Judge and that an intention to interfere with it, to clog it with a new condition or to impair or imperil it could not be presumed unless it was clearly manifested by express words or necessary intendment. In giving effect to the contentions of the appellants Rankin C.J. observed at pp. 641-642:-

"Now, the reasoning of the Judicial Committee in The Colonial Sugar Refining Company's case (A) is a conclusive authority to show that rights of appeal are not matters of procedure, and that the right to enter the superior court is for the present purpose deemed to arise to a litigant before any decision has been given by the inferior court. If the latter proposition be accepted, I can see no intermediate point at which to resist the conclusion that the right arises at the date of the suit."

It was held that the new clause could not be given retrospective effect and accordingly the date of presentation of the second appeal to the High Court was not the date which determined the applicability of the amended clause of the Letters Patent and that the date of the institution of the suit was the determining factor.

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7. The case of Nagendra Nath v. Man Mohan Singha, AIR 1931 Cal. 100 (N), is indeed very much to the point. In that case the plaintiffs instituted a suit for rent valued at Rs.1,306/15 and obtained a decree. In execution of that decree the defaulting tenure was sold on 20.11.1928, for Rs.1,600. On 19.12.1928, an application was made, under O. XXI, R. 90, Civil PC, by the present petitioner, who was one of the judgment-debtors, for setting aside the sale. That application having been dismissed for default of his appearance the petitioner preferred an appeal to the District Judge of Hoogly who refused to admit the appeal on the ground that the amount recoverable in execution of the decree had not been deposited as required by the proviso to S. 174, Cl. (c), of the Bengal Tenancy Act as amended by an amending Act in 1928. The contention of the petitioner was that the amended provision which came into force on 21.2.1929, could not affect the right of appeal from a decision on an application made on 19.12.1928, for setting aside the sale. Mitter J. said at pp. 101-102:-

"We think the contention of the petitioner is well-founded and must prevail. That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928, there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside the sale is dismissed for default) under the provisions of O. 43, R. (1), Civil PC. That right was unhampered by any restriction of the kind

now imposed by S. 174(5), Proviso. The Court was bound to admit the appeal whether appellant deposited the amount recoverable in execution of the decree or not. By requiring such deposit as a condition precedent to the admission of the appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. There can be no doubt that the right of appeal has been affected by the new provision and in the absence of an express enactment this amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal was filed after the Act came into force, but that circumstance is immaterial - for the date to be looked into for this purpose is the date of the original proceeding which eventually culminated in the appeal."

8. The above decisions quite firmly establish and our decisions in Janardan Reddy v. The State, AIR 1951 SC 124(O), and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd., AIR 1952 SC 409 (P), uphold the principle that a right of appeal is not merely a matter of procedure. It is matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. In the language of Jenkins C.J. in Nana v. Sheku (B) (supra) to disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication.

9. Sri Ganapathy Aiyar urges that the language of S. 22(1) as amended clearly makes the section retrospective. The new proviso, it is pointed out, pre-emptorily requires the authority not to admit the appeal unless it be accompanied by a satisfactory proof of the payment of the tax in respect of which the appeal is preferred and this duty the authority must discharge at the time the appeal is actually preferred before him. The argument is that after the amendment the authority has no option in the matter and he has no jurisdiction to admit any appeal unless the assessed tax be deposited. It follows, therefore, by necessary implication, according to the learned Advocate, that the amended provision applies to an appeal from an assessment order made before the date of amendment as well as to an appeal from an order made after that date. A similar argument was urged before the Calcutta Special Bench in Sardar Ali v. Dolimuddin (E) (supra), namely, that after the amendment the court had no authority to entertain an appeal without a certificate from the Single Judge. Rankin C.J., repelled this argument with the remark at p. 643 :-

"Unless the contrary can be shown, the provision which takes away jurisdiction is itself subject to the implied saving of the litigants' right."

In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to S. 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Sri Ganapathy Iyer on this point, therefore, cannot be accepted."

(emphasis is ours)

23. Thereafter, reliance was placed by the learned counsel for the respondent on the decision rendered by this Court in Daji Saheb v. Shankar Rao Vithalrao Mane, AIR 1956 SC 29. The factual matrix on the basis whereof the controversy was adjudicated upon, is reflected in paragraphs 2, 3 and 4. The same are extracted hereunder:

"2. The original decree was on 20-12-1946. The decree of the High Court allowing the plaintiff's claim was on 8-11-1949. The defendants applied for leave to appeal to the Federal Court on 6-1-1950. The High Court directed the trial court to find the value of the property which was the subject-matter of the suit at the time of the suit and on the date of the passing of the decree in appeal.

On 22-1-1951 the lower court ascertained the value as stated above. The High Court thereafter granted leave to appeal on 1-10-1951, overruling the objections raised by the plaintiff to the grant of such leave.

3. The maintainability of this appeal has been questioned before us by Mr. Dadachanji, learned counsel for the respondents, in a somewhat lengthy argument. His main contention was that Art. 133 of the Constitution applies to the case, and as the value is below Rs.20,000, no appeal can be entertained. It is the correctness of this argument that we have to consider.

4. On the date of the decree of the High Court, the defendants had a vested right of appeal to the Federal Court, as the properties were of the requisite value, and on 6-1-1950 they sought a certificate of leave to appeal, which was bound to be granted. The Constitution establishing the Supreme Court as the final appellate authority for India came into force on 26-1-1950. Did the vested right become extinguished with the abolition of the Federal Court? If the court to which an appeal lies is altogether abolished without any forum substituted in its place for the disposal of pending matters or for the lodgment of appeals, the vested right perishes no doubt.

We have therefore to examine whether the Constitution which brought the Supreme Court into being makes any provision for an appeal from a reversing decree of the High Court prior to the date of the Constitution respecting properties of the value of Rs. 10,000 and more being entertained and heard by the Supreme Court."

(emphasis is ours)

The issue raised in paragraph 4, extracted hereinabove, came to be answered by this Court in the following manner:

"8. Though Art. 133 does not apply, we have still to see whether it is a matter as regards which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution. It is unnecessary to refer in detail to the earlier enactments defining the jurisdiction of the Privy Council, and the Government of India Act, 1935 establishing the Federal Court and conferring a limited jurisdiction on the same.

It is sufficient to point out that as the law then stood, the Federal Court had jurisdiction to entertain and hear appeals from a decree of a High Court which reversed the lower court's decree as regards properties of the value of more than Rs. 10,000. The aggrieved party had a right to go before it, without any special leave being granted. It was a matter over which jurisdiction was "exercisable" by the Federal Court.

The Construction that it was "exercisable" only if the matter was actually pending before the Federal Court and that it could not be said to

be pending until the appeal is declared admitted under Order XLV of the Civil Procedure Code is too narrow, and does not give full and proper scope to the meaning of the word "exercisable" in the Article. Pending matters are dealt with under article 374(2), and we must give some meaning to the provisions of Art. 135.

As soon as the decree of the High Court came into existence, the jurisdiction of the Federal Court to hear an appeal from that decree became exercisable, provided certain conditions as to security and deposit were complied with, which are not material for our present purpose.

9. Reference may be made here to paragraph 20 of the Adaptation of Laws Order, 1950, as amended in 1951, which provides:

"Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law....."

By this Order section 110, Civil PC was adapted to the new situation but the requirement as to value was raised from 10,000 to 20,000. What is provided is that this adaptation will not affect the right of appeal already accrued.

10. If we accede to the argument urged by the respondents, we shall be shutting out altogether a large number of appeals, where the parties had an automatic right to go before the Federal Court before the Constitution and which we must hold was taken away from them for no fault of their own, merely because the Supreme Court came into existence in place of the Federal Court.

An interpretation or construction of the provisions of the Constitution which would lead to such a result should be avoided, unless inevitable. The Full Bench decision of the Madras High Court in - Veeranna v. G. China Venkanna, AIR 1953 Mad. 878 (A), was a case where the decree of the High Court and the application for leave to appeal were both after the Constitution came into force.

Whether in all matters where there was a right of appeal under section 110 of the Civil PC it continues in respect of all suits filed prior to the Constitution is a question that does not arise for decision now."

(emphasis is ours)

Based on the conclusions drawn by this Court, as have been extracted above, learned counsel vehemently contested the contention advanced on behalf of the appellant, that after the amendment of Section 15Z of the SEBI Act, the

right of second appeal had not been fully preserved. In this behalf it was pointed out, that under the unamended Section 15Z, the appellate right extended to questions of law as well as fact, whereas, under the amended Section 15Z, the appellate right was limited to questions of law alone. As such, it was submitted, that the effect of the amendment under reference, could not be described as a mere change of forum. According to learned counsel for the respondent, the amendment affected the respondent's right to appeal as well.

24. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. We shall now venture to determine the controversy which has been debated hereinabove. So as not to be required to repeatedly express one foundational fact, it would be pertinent to mention, that our determination, insofar as the present controversy is concerned, is with reference to situations wherein, the amending provision by express words or by necessary implication, does not mandate the amendment to be either prospective or retrospective. In the present case, the instant situation emerges from Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which is silent on the above subject.

25. First and foremost, we shall determine the veracity of the contention advanced at the hands of the learned counsel for the appellant, that the remedy of second appeal provided for in the unamended Section 15Z of the SEBI Act remained unaffected by the amendment of the said provision; and on

the basis of the above assumption, the learned counsel's submission, that the present controversy relates to an amendment which envisaged a mere change of forum. Insofar as the instant aspect of the matter is concerned, it would be pertinent to mention, that a right of appeal can be availed of only when it is expressly conferred. When such a right is conferred, its parameters are also laid down. A right of appeal may be absolute, i.e., without any limitations. Or, it may be a limited right. The above position is understandable, from a perusal of the unamended and amended Section 15Z of the SEBI Act. Under the unamended Section 15Z, the appellate remedy to the High Court, against an order passed by the Securities Appellate Tribunal, was circumscribed by the words "…on any question of fact or law arising out of such order.". The amended Section 15Z, while altering the appellate forum from the High Court to the Supreme Court, curtailed and restricted the scope of the appeal, against an order passed by the Securities Appellate Tribunal, by expressing that the remedy could be availed of "…on any question of law arising out of such order.". It is, therefore apparent, that the right to appeal, is available in different packages, and that, the amendment to Section 15Z, varied the scope of the second appeal provided under the SEBI Act.

26. As illustrated above, an appellate remedy is available in different packages. What falls within the parameters of the package at the initial stage of the lis or dispute, constitutes the vested substantive right, of the concerned litigant. An aggrieved party, is entitled to pursue such a vested substantive right, as and when, an adverse judgment or order is passed. Such a vested

substantive right can be taken away by an amendment, only when the amended provision, expressly or by necessary intendment, so provides. Failing which, such a vested substantive right can be availed of, irrespective of the law which prevails, at the date when the order impugned is passed, or the date when the appeal is preferred. For, it has repeatedly been declared by this Court, that the legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps, are connected by an intrinsic unity, and are regarded as one legal proceeding.

27. Where the appellate package, as in the present case, is expressed differently at the "pre" and "post" amendment stages, there could only be two eventualities. Firstly, the pre-amendment appellate package, could have been decreased by the amendment. Or alternatively, the post-amendment package, could have been increased by the amendment. In the former situation, all that was available earlier, is now not available. In other words, the right of an individual to the appellate remedy, stands reduced or curtailed. In the latter situation, the amendment enhances the appellate package. The appellate remedy available prior to the amendment, stands included in the amendment, and some further addition has been made thereto. In the latter stage, all that was available earlier continues to subsist. The two situations contemplated hereinabove, will obviously lead to different consequences, because in the former position, the amendment would adversely affect the right, as was available earlier. In the latter position, the amendment would not affect the

right of appeal, as was available earlier, because the earlier package is still included in the amended package.

28. In the facts and circumstances of this case, it is apparent that Section 15Z of the SEBI Act prior to the amendment, postulated that the appellate remedy would extend to "…any question of fact or law arising out of such order.". Whereas, the appellate remedy was curtailed consequent upon the amendment, whereunder the appellate right was limited to, "…any question of law arising out of such order.". Accordingly, by the amendment, the earlier appellate package stands reduced, because under the amended Section 15Z, it is not open to an appellant, to agitate an appeal on facts. That being the position, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, that the amendment to Section 15Z of the SEBI Act, envisages only an amendment of the forum, where the second appeal would lie. In our considered view, the amendment to Section 15Z of the SEBI Act, having reduced the appellate package, adversely affected the appellate right vested of the concerned litigant. The right of appeal being a vested right, the appellate package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a lis, till the eventual culmination of the proceedings. Obviously, that would be subject to an amendment expressly or impliedly, providing to the contrary. Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which has been extracted in paragraph 12 hereinabove reveals, that the 'repeal and saving' clause, neither expressly nor

impliedly, so provides. Thus viewed, we are constrained to conclude, that the assertion advanced at the hands of the learned counsel for the appellant, that the instant amendment to Section 15Z of the SEBI Act, does not affect the second appellate remedy, but merely alters the forum where the second appellate remedy would lie, is not acceptable.

29. Having concluded, that the remedy of second appeal vested in the respondent has not been preserved, in the same format as it was available to the respondent, at the time of initiation of the lis between the parties; and also having concluded, that the scope of the appellate remedy has been diminished by the amendment, we are satisfied in holding, that amendment to Section 15Z of the SEBI Act adversely affected the respondent, of a vested substantive appellate right, as was available to the respondent, at the commencement of the lis or dispute between the rival parties. Having recorded the aforesaid conclusion, based on the judgments relied upon by the learned counsel for the appellant, as also, by the learned counsel for the respondent, it is inevitable to conclude, that the appellate remedy available to the respondent prior to the amendment of Section 15Z of the SEBI Act, must continue to be available to the respondent, despite the amendment. We accordingly hold, that all the appeals preferred by the Board, before the High Court, were maintainable in law.

30. Having recorded our conclusion, as has been noticed in the foregoing paragraph, it is apparent, that insofar as the vesting of the second appellate remedy is concerned, neither the date of filing of the second appeal, nor the

date of hearing thereof, is of any relevance. Legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps are deemingly connected by an intrinsic unity, which are treated as one singular proceeding. Therefore, the relevant date when the appellate remedy (including the second appellate remedy) becomes vested in the parties to the lis, is the date when the dispute/lis is initiated. Insofar as the present controversy is concerned, it is not a matter of dispute, that the Securities Appellate Tribunal had passed the impugned order (which was assailed by the Board), well before 29.10.2002. This singular fact itself, would lead to the conclusion, that the lis between the parties, out of which the second appellate remedy was availed of by the Board before the High Court, came to be initiated well before the amendment to Section 15Z by the Securities and Exchange Board of India (Amendment) Act, 2002. Undisputedly, the unamended Section 15Z of the SEBI Act, constituted the appellate package and the forum of appeal, for the parties herein. It is, therefore, not possible for us to accept, the contention advanced at the hands of the learned counsel for the appellant, premised on the date of filing or hearing of the appeal, preferred by the Board, before the High Court. We accordingly reiterate the position expressed above, that all the appeals preferred by the Board, before the High Court, were maintainable in law.

31. It was also the contention of the learned counsel for the appellant, that in the absence of a saving clause, the pending proceedings (and the jurisdiction of the High Court), cannot be deemed to have been saved. It is not

possible for us to accept the instant contention. In the judgment rendered by this Court in Ambalal Sarabhai Enterprises Limited case (supra), it was held, that the general principle was, that a law which brought about a change in the forum, would not affect pending actions, unless the intention to the contrary was clearly shown. Since the amending provision herein, does not so envisage, it has to be concluded, that the pending appeals (before the amendment of Section 15Z) would not be affected in any manner. Accordingly, for the same reasons as have been expressed in the above judgment (relevant extracts whereof have been reproduced above), we are of the view, that the instant contention advanced at the hands of the learned counsel for the appellant is wholly misconceived. Furthermore, the instant contention is wholly unacceptable in view of the mandate contained in Section 6(c) and (e) of the General Clauses Act, 1897. While interpreting the aforesaid provisions this Court has held, that the amendment of a statute, which is not retrospective in operation, does not affect pending proceedings, except where the amending provision expressly or by necessary intendment provides otherwise. Pending proceedings are to continue as if the unamended provision is still in force. This Court has clearly concluded, that when a lis commences, all rights and obligations of the parties get crystallized on that date, and the mandate of Section 6 of the General Clauses Act, simply ensures, that pending proceedings under the unamended provision remain unaffected. Herein also, therefore, our conclusion is the same as has already been rendered by us, in the foregoing paragraphs.

32. Having concluded in the manner expressed in the foregoing paragraphs, it is not necessary for us to examine the main contention, advanced at the hands of the learned counsel for the appellant, namely, that the amendment to Section 15Z of the SEBI Act, contemplates a mere change of forum of the second appellate remedy. Despite the aforesaid, we consider it just and appropriate, in the facts and circumstances of the present case, to delve on the above subject as well. In dealing with the submission advanced at the hands of the learned counsel for the appellant, on the subject of forum, we will fictionally presume, that the amendment to Section 15Z by the Securities and Exchange Board of India (Amendment) Act, 2002 had no effect on the second appellate remedy made available to the parties, and further that, the above amendment merely alters the forum of the second appeal, from the High Court (under the unamended provision), to the Supreme Court (consequent upon the amendment). On the above assumption, learned counsel for the appellant had placed reliance on, the decisions rendered by this Court in Maria Cristina De Souza Sodder, Hitendra Vishnu Thakur and Thirumalai Chemicals Ltd. cases (supra) to contend, that the law relating to forum being procedural in nature, an amendment which altered the forum, would apply retrospectively. Whilst the correctness of the aforesaid contention cannot be doubted, it is essential to clarify, that the same is not an absolute rule. In this behalf, reference may be made to the judgments relied upon by the learned counsel for the respondent, and more importantly to the judgment rendered in Commissioner of Income Tax, Orissa case (supra), wherein it has been explained, that an amendment

of forum would not necessarily be an issue of procedure. It was concluded in the above judgment, that where the question is of change of forum, it ceased to be a question of procedure, and becomes substantive and vested, if proceedings stand initiated before the earlier prescribed forum (prior to the amendment having taken effect). This Court clearly declared in the above judgment, that if the appellate remedy had been availed of (before the forum expressed in the unamended provision) before the amendment, the same would constitute a vested right. However, if the same has not been availed of, and the forum of the appellate remedy is altered by an amendment, the change in the forum, would constitute a procedural amendment, as contended by the learned counsel for the appellant. Consequently even in the facts and circumstances of the present case, all such appeals as had been filed by the Board, prior to 29.10.2002, would have to be accepted as vested, and must be adjudicated accordingly.

33. The conclusion recorded by us in the foregoing paragraph emerges even from the mandate contained in Section 6 of the General Clauses Act, 1897. The legal contours emerging out of Section 6 aforementioned, have already been recorded by us, and need not be repeated.

34. For the reasons recorded hereinabove, we find no merit in this appeal and the same is accordingly dismissed. It is, however, necessary for us to record, that the impugned order was passed with reference to a number of appeals, which were preferred by the Board, as against a common order passed by the Securities Appellate Tribunal. In the impugned order, some of

the appeals preferred by the Board were held as maintainable before the High Court, whilst a different view was expressed with reference to the appeals preferred by the Board after 29.10.2002. We have concluded, that all appeals preferred by the respondent herein, before the High Court, were maintainable. In exercise of our jurisdiction under Article 142 of the Constitution of India, we direct, that the instant order passed by us would govern all cases which were disposed of by the High Court through the impugned order dated 13.10.2003.

35. Disposed of accordingly.

…….J.
(Jagdish Singh Khehar)

…….J.
(M.Y. Eqbal)

New Delhi;
January 13, 2015.