



Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.19 OF 2024**

Aihaana Achariya Sharma,
Daughter of Achariya Shankarlal Sharma,
44 years of age, Married,
Wife of Amit Hanumanthrao Kulkarni,
Indian National, Business,
Residing at 1101, Antarctica C-9,
Lodha Aqua, Opposite Western Express Highway,
Landmark Thakur Mall, Mira Road East,
Mira Bhayander, Mira Road,
Thane, Maharashtra 401107

... Applicant

Versus

1. M/s Maniyari Hotels Pvt. Ltd.,
A company registered under
the Companies Act, 1956,
Thr. its Director
Mr. Deepak Govindram Metha
Having its registered office at
No. 6, Airport Road, Chicalim
Mormugao, Goa 403711.

2. Amit Hanumanthrao Kulkarni,
Son of Hanumanthrao B. Kulkarni,
Residing at 1101, Antarctica C-9,
Lodha Aqua, Opposite Western Express Highway,
Landmark Thakur Mall, Mira Road East,
Mira Bhayander, Mira Road,
Thane, Maharashtra 401107.

3 . Bharat Kulkarni,
Son of Mohan Kulkarni, Resident of Flat No.170621
Prestige Ferns Residency,
Harlur Road, Bangalore, 560102.

...Respondents

Mr Shivraj Gaonkar, Advocate with Mr Prabhav P. Sirvoicar, Advocate for the
Applicant.

Mr Iftikhar Agha, Advocate with Mr Utkarsh Sawant, Advocate for Respondent No.1.

CORAM : VALMIKI MENEZES,J.

DATED : 10th July, 2025

ORAL JUDGMENT:

1. This is a Civil Revision Application against an order dated 21.06.2024 passed by the Commercial Court/ the Court of the Civil Judge Senior Division, Vasco in Criminal Suit No.4/2020/A, dismissing an application at Exh.77 on its file for rejection of the plaint on the ground that the bar under Section 12A of the Commercial Courts Act (the Act) would apply.

2. It was the case of the Petitioner/original Defendant in the suit that the Plaintiff, not having exhausted the pre-litigation requirement of subjecting case to mediation under Section 12A of the Act, the plaint was barred and ought to have been rejected.

3. The Respondent/original Plaintiff raised a preliminary objection to the maintainability of this revision application, arguing that the Petitioner has an efficacious remedy of appeal provided under sub-Section 1 of Section 13 of the Act. It was further submitted that on reading of Section 8 of the Act, the remedy of civil revision under the Code of Civil Procedure has been specifically barred and the bar covers all interlocutory orders passed during the course of the Commercial Suit. Reliance is placed

on the judgment of Supreme Court in *Dhanbad Fuels Pvt. Ltd. v/s. Union of India and Another* [2025 SCC OnLine SC1129] and Judgment of the Division Bench of the High Court of Telangana in case of *State of Telangana and Anr v/s. M/s. Siddartha Constructions Pvt. Ltd.* in Civil Revision Petition No.2623 of 2024.

4. There is no doubt that the sub-Section 1 of Section 13 provides an alternate remedy of an appeal against the order, which includes an order dismissing an application for rejection of a plaint. There is also a specific bar in terms of Section 8 of the Act for a Civil Revision to be filed against any interlocutory order passed in the course of the suit. The present revision application would therefore be barred.

5. The question whether in the facts and circumstances of the case, and considering that the case of the Petitioners for rejection of plaint was that there was a bar under Section 12A of the Act, this Court would exercise its supervisory jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order.

6. It is submitted by the learned Advocate for the Respondent that this very question has been addressed by the Telangana High Court in *State of Telangana* (supra) where the Telangana High Court has, considering the strong language deployed in Section 8 of the Act, held that a Writ Court would apply curbs on its exercise of powers under supervisory jurisdiction under Article 227 of the Constitution of India. The relevant paragraphs where this argument is considered are quoted below:

“3. The other objection taken by the petitioners was on the respondent circumventing the mandatory requirement of pre-institution mediation under section 12A of The Commercial Courts Act, 2015. The Trial Court relied on the decision of the Supreme Court in Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd., and held that the mandatory nature of section 12A of the Act would only be made applicable on and from 20.08.2022 as held by Patil Automation (supra) and that the Suit, having been filed on 30.11.2021, would hence be saved from the embargo.

13. It is settled law that the power of superintendence of a High Court under Article 227 is not an un-fettered jurisdiction where each and every order can be corrected or interfered with. Apart from the broad outlines of flagrant abuse, miscarriage of justice or dereliction of duty, the High Court must be conscious of invoking the power within limits. The limitation to such power would particularly assume importance in the face of a special statute like The Commercial Courts Act, 2015 which was enacted for the specific purpose of speedy resolution of high value commercial disputes.

14. Therefore, the bar contained in section 8 of the 2015 Act against filing of the Civil Revision Applications or Petitions cannot be taken lightly. The wording of section 8 is strong and is meant to be given effect to, notwithstanding any other law for the time being in force. The justification for the embargo can be found in section 13 of the 2015 Act which provides for Appeals from decrees of Commercial Courts and Commercial Divisions to the next Court in the hierarchical pyramid of section 13(1A) of the 2015 Act.

15. The petitioners herein have no answer as to why they have not filed an Appeal under section 13 (1) or (1A) of the 2015 Act and they have instead chosen to file a Civil Revision Petition against the impugned order. One can presume that the choice may have something to do with the time limits under section 13(1) and (1A) of the 2015 Act, both of which provide for a period of 60 days from the date of the judgment/order for filing of the Appeal.

16. More important however is that the bar contained in section 8 of the 2015 Act specifically extends to "any interlocutory order of a Commercial Court". In the present case, the petitioners application under Order VII Rule 11 of The C.P.C. was rejected. The impugned order hence is an interlocutory order. The situation would have been reversed had the application under Order VII Rule 11 of the C.P.C been allowed and the plaint been rejected amounting to a decree as defined in section 2(2) of the C.P.C."

7. For the reasons contained in the judgment, I would be in complete agreement with the view taken in **State of Telangana** (supra) even on the facts of the present case. For the very same reasons cited in **State of Telangana** (supra), in my opinion, this would not be an appropriate case to exercise the Article 227 jurisdiction of this Court. For this reason too, the Revision Application must be dismissed as not maintainable.

8. The fact however remains that in the present case, the Revision application has been filed on 04.07.2024, within the period of limitation otherwise prescribed for exercising the right of appeal in sub section 1 of

Section 13 of the Act before the Commercial Appellate Court. An appeal would lie before the District Court against the impugned order dated 21.06.2024 and such appeal would have been otherwise filed within a period of limitation. Considering this position, the Applicant would obviously have to avail the alternative remedy of appeal before the District Court along with an application for condonation of delay. Needless to state, the Commercial Appellate Court may consider the time spent by the Applicant before this Court pursuing the remedy of revision which is otherwise obviously barred by Section 8 and sub-section 1 of Section 13 of the Act.

9. The learned Advocate for the Petitioner submits that considering that the Petitioner resides in Mumbai, he would file an appeal with an application for condonation of delay before the Commercial Appellate Court within the period of 10 days from today.

10. The petitioner has expressed apprehension that the Commercial Court may proceed to hear the application filed by the Respondents/Plaintiffs, for passing a decree on admission, which hearing is listed on 11.07.2025; the learned Advocate for the Respondent / Plaintiff submits that the parties would jointly file an application before the Commercial Court to defer the matter for a period of 10 days till the Applicant files an appeal.

11. The revision application is dismissed as being not maintainable in view of the reasons stated above and with the observations made in the

preceding paragraphs.

12. No costs.

VALMIKI MENEZES, J.