



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 195 OF 2024

BETWEEN:

1. TRINETRAMILAN PRODUCT PROTECTION
SOLUTIONS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE
AT 7A/4-5, KADUGODI INDUSTRIAL AREA
NEAR MOLEX INDIA LIMITED
BENGALURU - 560 067
REPRESENTED BY ITS DIRECTOR
R. MADHUSUDHANA REDDY

...APPELLANT

(BY SRI ABHINAV RAMANAND A., ADVOCATE)

AND:

1. A.S. NARAYANAN
PROPRIETOR OF M/S. MILAN PACKAGING
SON OF NOT KNOWN TO THE APPELLANT
AGED ABOUT 59 YEARS
HAVING OFFICE AT 7A/4-5
KADUGODI INDUSTRIAL AREA
NEAR MOLEX INDIA LIMITED
BENGALURU - 560 067

...RESPONDENT

(BY SMT. REVATHI ADINATH NARDE, ADVOCATE FOR
SRI ADINATH NARDE, ADVOCATE)



THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 OF COMMERCIAL COURT ACT, 2015 READ WITH SECTION 104 AND ORDER XLIII RULE 1 OF THE CODE OF CIVIL PROCEDURE PRAYING TO SET ASIDE THE ORDER DATED 11.03.2024 PASSED BY THE X ADDITIONAL DISTRICT AND SESSIONS JUDGE, (COMMERCIAL COURT) IN COM O.S.NO.336/2022, DISMISSING IA NO.XII FILED BY APPELLANT UNDER ORDER VII RULE 10 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE AND SECTION 6 OF THE COMMERCIAL COURTS ACT SEEKING RETURN OF THE PLAINT (ANNEXURE A) & ETC.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning an order dated 11.03.2024 passed by the Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru [**commercial court**] in I.A.No.12 in Commercial O.S.No.336/2022.



2. The appellant was arrayed as defendant in the said suit, and it had filed the said application (I.A.12) under Order VII Rule 10 of the Code of Civil Procedure [**CPC**], contending that the learned commercial court lacked the jurisdiction to entertain the dispute. The said application was dismissed with costs by the impugned order.

3. The question to be considered at the threshold is whether an appeal against an order rejecting the application under Order VII Rule 10 of CPC is maintainable, in view of Section 13 of the Commercial Courts Act, 2015 [**CC Act**].

4. At the outset, we would consider it apposite to set out Sub-section (1A) of Section 13 of the CC Act. The same is reproduced below.

**"13. Appeals from decrees of Commercial Courts
and Commercial Divisions –**

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:



Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

5. The proviso to Sub-section (1A) of Section 13 of the CC Act provides that the appeal would lie against the orders passed by the Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of CPC as amended by the CC Act.
6. There is no dispute that an order dismissing an application under Order VII Rule 10 of CPC is not an order which is covered under Order XLIII of CPC. Notwithstanding the same, the learned counsel for the appellant contends that the appeal is maintainable as the impugned order passed by the learned commercial court has the trappings of finality and is thus to be construed as a judgment passed by the commercial court. He submitted that Section 13 of the CC Act, as amended by virtue of the "Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018" [**the CC Amendment Act 2018**], stipulates that an appeal would lie against a 'judgment or order' as against a 'decision' as mentioned under the unamended section.



7. He also submitted that a writ petition against the impugned order would not be an apposite remedy, as it is incompatible with the legislative intent of an expeditious resolution of commercial disputes. Additionally, this court, exercising jurisdiction under Article 226 or 227 of the Constitution of India, would not examine or re-examine the factual disputes. He also submitted that judicial superintendence under Article 227 must be exercised very sparingly.

8. We have heard the learned counsel for the appellant at length.

9. In our view, the question of whether an appeal lies against a commercial court's order that is not enumerated in Order XLIII of the CPC is no longer *res integra*. The same is covered by the decision of the Supreme Court in **Kandla Export Corporation & Anr. v. M/s. OCI Corporation & Anr.**¹, whereby the Supreme Court has held that the scope of an appeal under Section 13(1) of the Commercial Courts Act is controlled by the proviso to the said Sub-section. It is material to note that the proviso to Subsection

¹ (2018) 14 SCC 715



(1A) of Section 13 of the CC Act is identically worded as the proviso of Sub-section (1) of Section 13 as in force prior to the amendment in the year 2018. The relevant extract of the said decision is set out below:

“13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri. Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in *CIT v. Indo-Mercantile Bank Ltd.* [*CIT v. Indo-Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : AIR 1959 SC 713], thus : (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)

“9. ... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

‘8. ... it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.’

Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in *Abdul Jabar Butt v. State of J&K* [*Abdul Jabar Butt v. State of J&K*, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404], SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in *Ram Narain Sons Ltd. v. CST* [*Ram Narain Sons*



Ltd. v. CST, (1955) 2 SCR 483 : AIR 1955 SC 765],
said : (SCR p. 493 : AIR p. 769, para 10)

‘10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.’

10. Lord Macmillan in *Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality* [*Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality*, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows : (IA p. 122 : SCC OnLine PC)

‘... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude, from it by implication what clearly falls within its express terms.’

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Toronto Corpn. v. Attorney-General of Canada* [*Toronto Corpn. v. Attorney-General of Canada*, [1946] A.C. 32 (PC)], AC p. 37.)”

14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that



orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.”

10. It is also relevant to refer to the provisions of subsection (2) of Section 13 of the CC Act. The said subsection contains a *non obstante* clause that clearly indicates that its provisions would have an overriding effect. It expressly provides that, notwithstanding anything contained in any other law for the time being in force or the Letters Patent of a High Court, no appeal would lie from any order or decree of a Commercial Division or a Commercial Court otherwise than in accordance with the provisions of the CC Act. The Supreme Court had examined the import of the proviso to Section 13 of the CC Act, which is now set out as the proviso to Sub-section (1A) of Section 13 of the CC Act.



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11. In **HPL (India) Limited & Ors. v. QRG Enterprises and Another²**, the Delhi High Court had considered the scope of an appeal under Section 13 of the CC Act and held as under.

30. We now come to the meaning to be ascribed to the proviso in Section 13(1). It clearly stipulates that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the CPC, as amended by the said Act, and Section 37 of the Arbitration and Conciliation Act, 1996. We have seen that 'orders' as understood under the CPC are different and distinct from 'decrees'. And, orders are nothing but the formal expression of any decision of a Civil Court not amounting to a decree. Therefore, the amplitude and width of the expression 'order' is very wide under the CPC itself but not all orders are appealable. The appealable orders are enumerated in Order XLIII of the CPC. We have already pointed out above, that there are only two kinds of appeals recognized under the CPC, namely, - 'Appeals from decrees' and 'Appeals from orders'. Section 104, which has been extracted earlier in this judgment, specifies the orders from which appeals lie. It clearly provides that an appeal shall lie from the orders enumerated in the said provision itself and, save as otherwise expressly provided in the body of the CPC or by any law for the time being in force, from no other orders. This means that appeals from orders are restricted to those orders which are either specified in Section 104 itself or expressly provided in the body of the Code or by any law for the time being in force. Insofar as the impugned order is concerned, it is clear that it does not fall within the orders specified under Section 104. We now have to look at Order XLIII Rule 1 which stipulates that an appeal shall lie from the orders enumerated therein under the provisions of Section 104. In other words, only an order specified under Order XLIII Rule 1 would be appealable and, read with the provisions of Section 104, no other order would be an appealable order under the CPC. In this

² 2017 SCC Online Del 6955



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36. Reading the entire section 13 of the said Act the clear position is that an appeal lies from an order which is specifically enumerated under Order XLIII CPC. Furthermore, no appeal would lie from an order not specifically enumerated in Order XLIII CPC because of the incorporation of the expression “from no other orders” appearing in section 104 CPC (which is clearly applicable



by virtue of section 16(2) of the said Act). And, Section 10 of the Delhi High Court Act, 1966 would not come to the rescue because of the *non obstante* provision contained in section 13(2) of the said Act.

37. Therefore, as the impugned order does not find place in the orders specifically enumerated in Order XLIII CPC, no appeal could lie against it and the present appeal is not maintainable. But, as the learned counsel for the appellants have made several submissions to the contrary we shall have to deal with them.

12. The court also examined the contention whether by virtue of the decision of the Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania**³ – which was relied upon by the learned counsel for the appellant – the scope of the appeal under Section 13(1) of the CC Act was expansive to include judgments which fell within the meaning of the term as explained in the case of **Shah Babulal Khimji (supra)**, and held as under.

51. On going through *Khimji's case* (supra), it is evident that the word “judgment” as used in the Letters Patent of the High Courts, is much wider and goes beyond the orders specifically enumerated under Order XLIII of the CPC. But, what must not be forgotten is that the word “judgment” in *Khimji's case* (supra) has been interpreted as appearing in and in the context of the Letters Patent of High Courts (which would also by analogy include Section 10 of the Delhi High Court Act, 1966). However, the meaning of the word “judgment” as appearing in the CPC, as defined in Section 2(9) thereof is clearly linked with the definition of a “decree”. The word ‘judgment’ in Section 13(1) of the said Act has to be considered not in the

³ (1981) 4 SCC 8



context of any Letters Patent of a High Court or a provision such as Section 10 of the Delhi High Court Act, 1966 but, in the context of the Code of Civil Procedure inasmuch as (1) the Commercial Division and the Commercial Court are enjoined by Section 16 to follow the provisions of the CPC, as amended by the said Act, in the trial of a suit in respect of a Commercial dispute of a specified value; (2) Section 13(2) of the said Act specifically excludes the operation of the provisions contained in the Letters Patent of a High Court or any other law for the time being in force (which includes Section 10 of the Delhi High Court Act, 1966) insofar as appeals from any order or decree of a Commercial Division or a Commercial Court are concerned. We have already indicated that the word “judgment” as appearing in Section 13(1) of the said Act is actually a misnomer and the said word has to be construed as a reference to a decree. Therefore, in our view, the wider meaning ascribed to the word “judgment” under the Letters patent of High Courts or under a provision, such as Section 10 of the Delhi High Court Act, 1966, cannot be imported into Section 13(1) of the said Act.

13. The view that the remedy of an appeal under Section 13 of the CC Act is confined only to orders as enumerated under Order XLIII of CPC was accepted by the Andhra Pradesh High Court in **P.Udaya Bhaskara Reddy v. Sreepada Real Estate & Developers Hyderabad and another**⁴; the Calcutta High Court in **Alok Saraf and Others v. Shyam Sundar Nangalia and Others**⁵; as well as the Orissa High Court in **Sushanta Kumar Kabi v.**

⁴ 2024 SCC Online AP 4102

⁵ 2025 SCC Online Cal 7835



AABSyS Information Technology, Represented by Namita Priya and Others⁶.

14. A similar view has been expressed by the Delhi High Court in **HP Cotton Textile Mills Ltd., v. Oriental Insurance Company Ltd.,⁷; Arrena Overseas Pvt. Ltd. v. Batra Art Press⁸** and in **Shyam Sunder Suri and another v. P. C. Jain Textiles Pvt. Limited⁹.**

15. We may note that the Delhi High Court in ***D&H India Limited v Superon Schweisstechnik India Limited¹⁰*** held that the proviso to Subsection (1A) to Section 13 did not dilute the provision of Section 13(1A) and thus could not be read as excluding the remedy of an appeal in respect of all orders other than those specified in Order XLIII of the CPC. It would be apposite to refer to the following passage from the said decision.

"23. On a plain reading, the proviso to Section 13 (1A) of the Commercial Courts Act is an enabling, rather than a disabling, provision. There is nothing, in the said proviso, which would seem to indicate that it dilutes the effect of sub-section (1A) of Section 13. If we were to read the said proviso as excluding, from the jurisdiction of the appellate

⁶ 2025 SCC Online Ori 414.

⁷ Neutral citation 2023/DHC/000632

⁸ Neutral Citation 2023/DHC/7446-DB

⁹ 2025 SCC Online Del 2738

¹⁰ 2020 SCC Online Del 477



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court, all orders, passed by a Commercial Court, save and except those which find specific enumeration in Order XLIII of the CPC, it may amount to rewriting the proviso to read "Provided that *no appeal shall lie, except* from such orders passed by a Commercial Division or the Commercial Court as are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996)." We are not convinced that the province of our jurisdiction, in the present case, allows us to so legislate. To our mind, therefore, subsection (1A) of Section 13 of the Commercial Courts Act allows appeals to be preferred *against all judgements and orders of the Commercial Division of the High Court*, to the Commercial Appellate Division thereof, and the proviso, to the said subsection merely clarifies that, in the case of orders specifically enumerated in Order XLIII of the CPC, such appeals *shall lie*."

16. However, in a subsequent decision in **Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.**¹¹, a Division Bench of the Delhi High Court faulted that decision. We find it appropriate to refer to the following extract from the said decision.

"8. We had doubts about the correctness of the view taken in *D & H India Ltd.* (Supra). We felt that the said view went against the very purpose for which the Commercial Courts Act was enacted i.e. to provide for speedy disposal of high value commercial disputes, as is evident from the Statement of Objections and Reasons for the said Act. The effect of judgment in *D & H India Ltd.* (Supra) was that all orders passed by the Commercial Courts, or the Commercial Division of the High Court, would be appealable when, before the enactment of the Commercial Courts Act, only such orders were appealable, which were either specifically made appealable, such as, under Section 104, or within Order XLIII CPC, or qualified as

¹¹ 2021 SCC Online Del 4390



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“judgments” within the meaning of that expression, as explained by the Supreme Court in *Shah Babulal Khimji V. Jayaben D. Kania*, (1981) 4 SCC 8 : AIR 1981 SC 1786. Thus, the right to prefer an appeal - if *D & H India Ltd.* (Supra) were to be accepted as the correct view, stood expanded by Section 13 of the Commercial Court Act, when compared to the right of appeal available prior to its enactment. We were of the prima facie view that this would go contrary to the purpose and object of the Commercial Courts Act, as creation of a right of appeal against all and sundry orders passed in Original Commercial Causes would impede the progress of the causes. Every appeal at the interlocutory stage of the proceedings acts as a speed breaker in the progress of the cause. Moreover, if the proviso to Section 13(1A) were to be read as not limiting or qualifying the right of appeal contained in Section 13(1) and the first part of Section 13(1A), then there was no need to enact the proviso. The view taken in *D & H India Ltd.* (Supra) rendered the proviso to Section 13(1A) a surplusage - which is not to be presumed in respect of any part of a legislation. Thirdly, the view taken by the Division Bench in *D & H India Ltd.* (Supra) neither took into account Section 13(2), nor the interpretation adopted by the Division Bench could be reconciled with the clear plain meaning of Section 13(2). A party aggrieved by an order passed at the interlocutory stage of the proceedings is not entirely remediless, in as much, as, Section 105 CPC entitles the party aggrieved by any such interlocutory order, to assail the same which appealing against the decree by raising a ground in the Memorandum of Appeal. Moreover, the option to assail the interlocutory order before the Supreme Court, by preferring a Special Leave Petition, is also available. Since we were finding it difficult to persuade ourselves to accept the view expressed in *D & H India Ltd.* (Supra), we decided to hear the submissions of learned counsels, and directed them to place on record copies of the judgements that they wish to rely upon.

9. The respondents, who are opposing the maintainability of the appeals, have placed before the Court the judgement rendered by the Supreme Court in *Kandla Export Corporation v. OCI Corporation*, (2018) 14 SCC 715, wherein the Supreme Court has interpreted Section 13 of the Commercial Courts Act, and held as follows:



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10. A perusal of the above extract shows that the Supreme Court has already interpreted and pronounced upon the scope of the appeals maintainable under Section 13 of the Commercial Courts Act, and while doing so, the Supreme Court has held that the primary purpose of the proviso is to qualify the generality of the main part by providing an exception.

11. This decision of the Supreme Court in *Kandla Export Corporation* (supra) decided on 07.02.2018, was rendered prior to the judgement in *D & H India Ltd.* (supra), rendered by a Division Bench of this Court. However, this judgement was, apparently, not brought to the notice of the Division Bench and has, therefore, escaped the attention of the Division Bench.

12. A perusal of *D & H India Ltd.* (supra) shows that the Division Bench has also not referred to and dealt with, specifically Section 13 (2) of the Commercial Courts Act that, in terms, states that "notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act." Thus, an appeal from an order passed in a commercial cause would lie only in accordance with Section 13(1) and 13(1A), and not otherwise. An appeal, by resort to the Letters Patent (in the light of the judgement of the Supreme Court in *Shah Babulal Khimji* (supra)) is also not maintainable under Section 13 of the Commercial Courts Act.

17. We may note that a Special Leave Petition was preferred against the aforesaid decision in **Odeon Builders** (supra).



However, the Supreme Court dismissed the SLP¹² by an order dated 31.01.2022, which reads as follows:

"Heard learned counsel for the petitioner.

We do not find any error in the impugned order passed by the Division Bench of the High Court holding that all orders passed by the Commercial Division of the High Court are not appealable.

The Special Leave Petition is, accordingly, dismissed.

Pending application(s), if any, also stand disposed of."

18. We may also note that the Bombay High Court had also expressed a similar view in **Bank of India and Another v. Maruti Civil Works**¹³. The Bombay High Court was concerned with the question of the maintainability of an appeal against an order rejecting an application filed under Order VII, Rule 10 and Rule 11(d) of the CPC. The court found that the appeal was not maintainable. The relevant extract of the said decision is set out below:

"15. If we compare the unamended provision with the amended provision of Section 13 of the Act of 2015, what we find is that earlier an appeal was provided against a "decision" of a Commercial Court or Commercial Division

¹² Petition for Special Leave to Appeal No.901/2022 (M/s Rayban Foods Private Limited v. GAC Logistics Private Limited)

¹³ 2023 SCC Online Bom 2667



of a High Court to the Commercial Division of that High Court, whereas, after the amendment the expression “decision” has been substituted by the expression “judgment or order”. It is also noticeable that the proviso appended to sub section (1) of section 13 which earlier existed has been retained in the amended provision as well. To determine as to whether the instant appeal is maintainable, we may also refer to sub section (2) of section 13 of the Commercial Courts Act which begins with a non-obstante clause and provides that notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree under Section 13 otherwise than in accordance with the provisions of the said Act.

16. In our opinion, sub section 2 of Section 13 unequivocally provides that any appeal against a decree or order of a Commercial Court or Commercial Division shall lie only in accordance with the provisions of the Act and in view of what has been provided for in sub section 2 of Section 13, the proviso appended to Section 13 assumes importance.

17. Sub Section 1A of Section 13 provides that a person aggrieved by a judgment or order can file an appeal, however, the said provision is to be read in conjunction with the proviso which specifically states that an appeal shall lie only from orders which are specifically enumerated under Order XLIII of the CPC. The occurrences of the expression “shall” and “specifically” in the proviso has to be noted for correctly understanding the legislative intent in framing the scheme of Section 13 of the Act of 2015. It is also noteworthy that the order under challenge in this appeal has been passed by the learned trial court rejecting the Application moved by the Defendants under Order VII Rule 10 and Rule 11(d) of the CPC. Such an order is not enumerated in Order XLIII of the CPC, though Rule 1(a) of Order XLIII enlists an order passed under Order VII Rule 10 for returning the plaint. Thus, Order XLIII enlists the order passed on an Application under Order VII Rule 10 if it is allowed, however, it does not enlist the order in case such an Application is rejected. Order XLIII also does not enlist any



order passed on an Application under Order VII Rule 11(d) of the CPC.

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28. Thus, from the discussion made above, we are clear in our mind that an appeal under Section 13(1A) of the Act of 2015 would lie only against the judgment and orders which are enumerated or enlisted under Order XLIII of the CPC. An order rejecting an Application moved under Order VII Rule 10 or Order VII Rule 11(d) of the CPC is not enumerated or enlisted in Order XLIII of the CPC hence, such an order is not appealable following the law laid down by this court in the case of *Skil-Himachal Infrastructure & Tourism Ltd.* (supra).

19. A Special Leave Petition was filed against the decision in **Bank of India (supra)**. However, the Supreme Court dismissed the same by an Order dated 15.03.2024¹⁴.

20. We may also note that the decision of the Bombay High Court in **Bank of India v. Maruti Civil Works**¹⁵ fell for consideration before the Supreme Court in **MITC Rolling Mills Private Limited and Another v. Renuka Realtors and Others**¹⁶. In the said case, the Supreme Court considered the challenge to a decision of the Bombay High Court holding that an appeal against an order of the Commercial Court rejecting the plaint was not

¹⁴ Petition for Special Leave to Appeal (C) No.6039/2024 (Bank of India & Anr. v. M/s. Maruti Civil Works)

¹⁵ (supra)

¹⁶ 2025 SCC Online SC 2375



maintainable on the ground that the plaint did not fall within the ambit of Order XLIII of CPC. The Supreme Court held that an order rejecting a plaint under Order VII Rule 11 of the CPC would finally dispose of the *lis* and would amount to a decree. In that view, an appeal would be maintainable. In that case, the Supreme Court also distinguished the decision of the Bombay High Court in the case of **Bank of India v. Maruti Civil Works (Supra)** as not applicable, for the reason that it related to the order rejecting the applications under Order VII Rule 10 and Order VII Rule 11(d) of CPC, which were orders that were not enumerated under Order XLIII of CPC. It is relevant to refer to the following extracts of the said decision.

17. Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeals against '*judgments*' and '*orders*' of the Commercial Court to the Commercial Appellate Division of the High Court. The proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof. Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders



not so enumerated would not fall within the restricted fold of the proviso.

18. Coming to the judgment relied upon by the respondents, i.e., *Bank of India* (supra), we are of the view that the same is clearly distinguishable, and the ratio thereof has no applicability to the present situation because, in the said case, the order under challenge was one **rejecting** the application moved under Order VII Rule 10 or under Order VII Rule 11(d) of the CPC. Paragraph No. 17, relied upon by the respondents for canvassing their submission, reads as under:

“17. Sub Section 1A of Section 13 provides that a person aggrieved by a judgment or order can file an appeal, however, the said provision is to be read in conjunction with the proviso which specifically states that an appeal shall lie only from orders which are specifically enumerated under Order XLIII of the CPC. The occurrences of the expression “shall” and “specifically” in the proviso has to be noted for correctly understanding the legislative intent in framing the scheme of Section 13 of the Act of 2015. **It is also noteworthy that the order under challenge in this appeal has been passed by the learned trial court rejecting the Application moved by the Defendants under Order VII Rule 10 and Rule 11(d) of the CPC. Such an order is not enumerated in Order XLIII of the CPC, though Rule 1(a) of Order XLIII enlists an order passed under Order VII Rule 10 for returning the plaint. Thus, Order XLIII enlists the order passed on an Application under Order VII Rule 10 if it is allowed; however, it does not enlist the order in case such an Application is rejected.** Order XLIII also does not enlist any order passed on an Application under Order VII Rule 11(d) of the CPC.”

[Emphasis supplied]

19. A bare reading of the above paragraph makes it manifest that the said case involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11(d) of the CPC, which order(s) are not enumerated under Order XLIII of the CPC. Thus, there cannot be any quarrel with the proposition that such an order would not be amenable to an appeal under Section



13(1A) of the CCA, 2015, and rather, can be challenged by filing a revision or a petition/application under Article 227 of the Constitution of India, as the case may be.

21. The learned counsel for the appellant had referred to the decision of the Division Bench of this Court in **Smt. Supriya Shrinete, New Delhi v. M/s MRT Music ORS., Bangalore and others**¹⁷. In the said case, the Division Bench of this Court considered an appeal challenging an order passed under Order XXXIX Rule 1 and 2 of the CPC for an ad-interim temporary injunction passed by the learned Commercial Court.

22. There is no dispute that an order passed on an application under Order XXXIX Rule 1 and 2 of CPC would be appealable. While examining the maintainability of the appeal, the court sought to distinguish the Supreme Court's decision in **Kandla Exports Corporation (supra)**, on the ground that it was rendered in the context of Section 13 of the CC Act, prior to its amendment by the CC Amendment Act 2018.

23. It is relevant to set out Section 13 of the CC Act as it was in force both before and after the amendment that came into force on 03.05.2018. The same is set out below:

¹⁷ ILR 2022 KAR 5159



Section 13 of the CC Act, prior to its amendment:

"Section 13: Appeals from decrees of Commercial Courts and Commercial Divisions.—

(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996".

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

Section 13 of the CC Act, after its amendment vide Act No.28 of 2018 w.e.f. 03.05.2018

"13. Appeals from decrees of Commercial Courts and Commercial Divisions.—*(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.*

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the



Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996.

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

24. It is apparent from the above, that Sub-section (1) of Section 13 was substituted and now contemplates an appeal against an order of the Commercial Court, which is below the level of a District Judge. Subsection (1A) of Section 13 provides for an appeal against the judgment or order of a Commercial Court at the level of a District Judge or an order of the Commercial Division of a High Court.

25. The statement of objects and reasons to the CC Amendment Act, 2018 indicates that the amendment to Section 13 of the CC Act was, *inter alia*, introduced in view of the amendments enabling the State Governments to establish Commercial Courts and Commercial Appellate Courts at the District level. The word 'decision' in Sub-section (1) of Section 13 of the CC Act is now replaced with the words 'judgment or order', which are narrower than the scope of the term 'decision'.



26. The proviso to Section 13(1) of the CC Act stands deleted and placed as proviso to Sub-section (1A) of Section 13 of the CC Act. However, we are unable to accept that replacing the proviso to Sub-section (1) to Subsection (1A) of Section 13 of the CC Act changes its meaning or import as explained by the Supreme Court in **Kandla Exports Corporation**¹⁸.

27. The present appeal is preferred under Section 13(1A) of the CC Act, and therefore, the meaning of the proviso to Section 13(1A) as explained in **Kandla Exports Corporation (supra)** would control the scope of the appeal.

28. The decision of the Supreme Court in the case of **Kandla Exports Corporation (supra)** cannot be disregarded merely because it was rendered in the context of Section 13 of the CC Act as it existed prior to its amendment in 2018.

29. The question regarding Amendment to Section 13(1A) was also considered by the Division Bench of the Delhi High Court in

¹⁸ (supra)



Ramacivil India Construction Pvt. Ltd. v. Union of India¹⁹. It is apposite to refer to the following observations made by the Court:

“34. As already discussed above, even by amendment in the year 2018, the proviso which existed prior to amendment has been retained, and accordingly the ratio, that appeal under Section 13 of the Commercial Courts Act, 2015 would not be maintainable, except against orders which are enlisted in Order XLIII of the CPC, as held by Hon'ble Supreme Court in *Kandla Export* (supra), will have its application with full force in the facts of the instant appeals as well.”

30. Considering the observations made by the Supreme Court in **MITC Rolling Mills Private Limited and Another v. Renuka Realtors and others**²⁰, the appellant can draw no assistance from the observations made by this Court in **Smt. Supriya Shrinате** (supra).

31. In view of the above, we find that the present appeal is not maintainable. We also note that the present appeal was listed for the first time on 24.06.2024 and has been listed on twenty-nine occasions thereafter, including the hearing this day. The appellant has been enjoying an ex parte interim order since 25.06.2024. We also note that the matter had been adjourned on several occasions at the counsel's request. On a few occasions, the matter had been

¹⁹ 2025 SCC Online Del 9140

²⁰ supra



adjourned on the ground that the parties were attempting to settle their disputes amicably. Considering the time spent by the parties before this Court and that the object of the CC Act is an expeditious disposal of matters involving commercial disputes, we request the learned Commercial Court to decide the suit as expeditiously as possible. The parties are also directed to fully cooperate with the Commercial Court to expedite the disposal of the commercial suit.

32. The appeal is dismissed as not maintainable.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KMV
List No.: 2 SI No.: 24