

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 253 OF 2015
IN
CHAMBER SUMMONS (L) NO. 1341 OF 2014
AND
NOTICE NO. 716 OF 2014
IN
EXEUTION APPLICATION NO. 320 OF 2014
IN
AWARD DATED 28-04-2009
IN
SUIT NO. 1127 OF 1983**

Vikram V. Vyas and ors. .. Appellants

V/s.

Madhusudan G. Vyas and ors. .. Respondents.

Mr. Arief Bookwala, Sr. Advocate a/w. Mr. Farid Karachiwala, Mr. Sahil Saiyed, Mr. Nikhil Apte i/b Wadia Ghandy & Co. for the Appellants.

Mr. D.D. Madon, Sr. Advocate i/b M/s. Kanga & Co. for Respondent Nos.1,2 and 7.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 26 OCTOBER 2016.

P.C.

1] The present appeal challenges the impugned order, which is in execution proceedings for implementing an award passed in the arbitration proceedings.

2] When the appeal came up for admission, Mr. D.D. Madon, learned senior advocate appearing for respondent Nos.1,2 and 7, raises the question of maintainability of the appeal by placing reliance upon the decision of the Division Bench of this Court in ***Jet Airways (India) Limited and anr. v. Mr. Subrata Roy, Sahara, and ors.***¹. With regard to maintainability of the appeal, the Division Bench of this Court, in *Jet Airways (India) Limited (supra)*, has raised three issues for consideration, which read as under;

“A. Whether the proceedings under section 36 of the 1996 Act are proceedings under the Code of Civil Procedure, 1908?

B. Whether the provisions of clause 15 of the Letters Patent are applicable to the impugned Judgment and Order and whether applicability of clause 15 has been impliedly excluded by section 37 of the 1996 Act or by the amendment of section 2(2), 47 by Act 104 of 1976 amending the Code ?

C. Whether the Judgment of Supreme Court in the case of *Fuerst Day Lawson (supra)* is an authority which is applicable only in respect of a foreign award covered by Part II of the 1996 Act or whether the ratio of the said Judgment is a binding precedent even in respect of proceedings under part I of the 1996 Act or the same is obiter dicta ?”

3] Ultimately, while answering the issues A,B & C, the Division Bench has opined that the appeal is not maintainable in the light of observations made in the various paragraphs of the said decision. Learned senior advocate for respondent Nos.1,2 and 7 also referred to the decision of the Supreme Court in ***Fuerst Day Lawson Limited v. Jindal Exports Limited***² with reference to

1 (2012) 2 AIR Bom R 855

2 (2011) 8 SCC 333

maintainability of the appeal.

4] In view of the decision of the Division Bench of this Court in *Jet Airways (India) Limited (supra)* and also the decision of the Supreme Court in *Fuerst Day Lawson Limited (supra)*, we are of the opinion that the present appeal is not maintainable and the same is dismissed accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)