

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: November 14, 2017

+ **FAO(OS) (COMM) 186/2017, CM No. 37717/2017**
VARUN FASHION

..... Appellant

Through: Dr. Sarbjit Sharma, Adv. with Ms.
Sunaina Pasricha & Ms. Nitika
Khanna, Advs.

versus

ITC LTD

..... Respondent

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms.
Nupur Lamba & Ms. Sonal Chhablani,
Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. The appellant is aggrieved by the order dated 31st August, 2017 passed by the learned Single Judge of this Court, by which the written statement has been taken on record beyond the period of 120 days as prescribed under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the 'Act').

2. Learned counsel for the appellant has relied upon a decision rendered by a Single Judge of this Court in the case of *Oku Tech Private Limited vs. Sangeet Aggarwal and Ors* decided on 11th August, 2016 and *Gulf DTH FZ LLC v. Dish T.V India Limited and Ors.*, reported in (2016) Vol. 8 AD (Delhi) 266 to submit that the written statement could not have been taken on record beyond a period of 120 days.

3. Mr. Sethi, learned Senior Counsel, who enters appearance on behalf of the respondent has opposed this appeal on the ground of maintainability. Reliance is placed on Section 13 of the Act and two decisions rendered by a Coordinate Bench of

this Court in the case of **Harmanprit Singh Sidhu v. Arcadia Shares and Stock Brokers Pvt. Ltd** reported in 2016 SCC OnLine Del 5383 and **HPL (India) Limited and Ors. v. QRG Enterprises and Ors.** reported in 238 (2017) DLT 123.

4. Additionally, Mr. Sethi submits that reading of the impugned order would show that there is no finding that in fact there was delay in filing the written statement as the stand taken by the respondent (defendant in the suit) was and is that the written statement was filed within the period allowed.

5. We have heard the learned counsel for the parties. Section 13 of the Act reads as under:

“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 Appellate 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 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.”

6. Para 36 in the case of **HPL (India) Limited and Ors. (supra)** reads as under:-

“36. 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.”

7. Applying the law laid down in the case of ***Harmanprit Singh Sidhu (supra)*** and ***HPL (India) Limited and Ors. (supra)***, we are of the view that the present appeal is not maintainable.

8. Resultantly, the Appeal is dismissed.

CM No. 37717/2017 (for stay)

The application is dismissed in view of the order passed in the present appeal.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/ak

