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

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+ **FAO (OS) (COMM) 288/2018**

HOLYSTAR NATURAL RESOURCES LIMITED Appellant
Through: Mr Rakesh Malhotra, Advocate.

versus

RAGHBIR SINGH CHHABRA & ORS. Respondents
Through: Mr Pawanjit Bindra, Mr
Bhuwaneshwar Tyagi and Mr G.S.
Patwalia, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
% **04.02.2019**

CM 51082/2018 (exemption)

1. Allowed, subject to all just exceptions.

CM 51084/2019 (delay)

2. For the reasons explained in the application, the delay in filing the appeal is condoned. The application is allowed.

FAO(OS) (COMM) 288/2018 & CMs 51081/2019 and 51083/2019

3. The challenge in the present appeal is to an order dated 10th September, 2018 passed by the learned Single Judge in an interim application being IA No.3422/2017 in CS (Comm.) No.7/2015 whereby the Respondents/Plaintiffs were permitted to amend the plaint under Order VI

Rule 17 of the Civil Procedure Code, 1908 ('CPC').

4. A preliminary objection is taken by learned counsel for the Respondents as to the maintainability of the present appeal, referring to Section 13 of the Commercial Courts Act, 2015 ('CCA'), which reads as thus:

“13. (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.”

5. Learned counsel for the Respondents contends that Section 13 of the CCA limits the scope of appeals to those enumerated under Order 43 of the CPC and that an order allowing an amendment under Order VI Rule 17 CPC is not one of the orders against which an appeal is maintainable. He also refers to the decision of this Court in ***HPL (India) Limited. v. QRG Enterprises (2017) 238 DLT 123 (DB)*** which has been followed by the subsequent DBs of this Court, the last being the decision dated 12th October, 2018 in FAO (OS) No.105/2018 (***VHB Life Sciences Inc v. Merck Sharp & Dohme Corp.***). He has also placed reliance on an order dated 14th January, 2019 of

the Supreme Court of India in SLP (Civil) No.33475/2018 (*VHB Life Sciences Inc. (Now VHB Life Sciences Ltd.) v. Merck Sharp and Dohme Corp.*) dismissing the SLP against the order passed by the DB of this Court on 12th October, 2018.

6. Having heard the learned counsel for the parties, this Court is of the view that the aforementioned decisions of this Court clearly hold that only such of those orders of the learned Single Judge which are covered under Order 43 CPC would be amenable to an appeal before the DB of this Court. The present impugned order is not one of those orders listed out in Order 43 CPC.

7. In view of the aforementioned decisions of this Court, the present appeal is clearly not maintainable and is accordingly dismissed. Pending applications are also disposed of. No costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 04, 2019
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