

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

APPEAL (L) NO.555/2019  
IN  
COMPANY APPLICATION NO.3/2019  
IN  
COMPANY APPEAL NO.25/2009  
IN  
COMPANY APPLICATION NO.657/2008  
IN  
COMPANY PETITION NO.28/2005  
WITH  
INTERIM APPLICATION NO.1/2019  
IN  
APPEAL (L) NO.555/2019

Prakash R Dhariwal ..... Appellant

Vs.

Mr. Subhash Hastimal Lodha & Ors. .... Respondents

Mr. Ashish Kamat, Mr. Lalit Katariya, Ms. Benedicta Lobo  
I/b Katariya & Associates for the Appellant

Mr. Navroz Seervai, Senior Advocate a/w. Mr. Sharan  
Jagtiani, Ms. Nidhi Singh, Ms. Nupur Jalan, Mr. Akshay  
Doctor, Ms. Kinjal Bhatt I/b. Vidhi Partners for Respondent  
Nos.1 and 2.

Mr. Samsher Garud, Bijal Gandhi, Harsh Moorjani I/b.  
Jayakar & Partners for Respondent No.6.

Mr. Sachin Mandlik a/w. Mr. Nikhil Ratti Kapoor I/b.  
Ms.Tvisha Desai I/b. Vishal Shriyam for Respondent Nos.4  
and 5.

WITH  
APPEAL (L) NO.546/2019  
IN  
COMPANY APPLICATION NO.3/2019  
IN  
COMPANY APPEAL NO.25/2009  
IN  
COMPANY APPLICATION NO.657/2008  
IN

Basavraj  
G. Patil

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COMPANY PETITION NO.28/2005  
WITH  
INTERIM APPLICATION NO.1/2019  
IN  
APPEAL (L) NO.546/2019

Manikchand Promoters & Developers  
Pvt. Ltd. .... Appellant

Vs.

Subhash Hastimal Lodha & Ors. .... Respondents

Mr. Aspi Chinoy, Senior Advocate a/w. Mr. Vaibhav Sugdare,  
Mr. Samsheer Garud, Mr. Bijal Gandhi, Mr. Harsh Moorjani  
I/b. Jayakar & Partners for the Appellant

Mr. Sharan Jagtiani with Ms. Nidhi Singh, Mr. Akshay  
Doctor, Ms. Kinjal Bhatt I/b. Vidhi Partners for Respondent  
Nos.1 and 2.

Mr. Lalit Kataria with Benedicta Lobo I/b. Katariya &  
Associates for Respondent No.6.

Mr. Sachin Mandlik a/w. Mr. Nikhil Ratti Kapoor I/b. Ms.  
Tvisha Desai I/b. Vishal Shriyam for Respondent Nos.4 & 5.

**CORAM: K.K.TATED &  
SARANG V. KOTWAL, JJ.**

**RESERVED FOR ORDERS ON : 18<sup>th</sup> DECEMBER 2019**

**PRONOUNCED ON : 9<sup>th</sup> JANUARY 2020**

**JUDGMENT (PER : K. K. TATED, J.)**

1 Heard the Learned senior counsel Mr. Chinoy for the  
Appellant in Appeal (L) No.546/2019, Learned Counsel  
Mr. Kamat in Appeal (L) No.555/2019, Learned senior  
counsel Mr. Seervai for Respondent Nos.1 and 2 in Appeal

(L) No.555/2019 and Mr. Jagtiani, Learned counsel, for Respondent Nos.1 and 2 in Appeal (L) No.546/2019.

2 Both these Appeals arise from the order dated 09.10.2019 passed by the Learned Single Judge in Company Application No.3/2019 in Company Appeal No.25/2009 in Company Application No.657/2008 in Company Petition No.28/2005.

3 Hence, by consent of the parties, both these Appeals are taken up for final hearing at the stage of admission itself.

4 By these Appeals, the Appellants are challenging the order dated 09.10.2019 passed by the Learned Single Judge in Company Application No.3/2019 directing them to deposit sum of Rs.42 crores with the Prothonotary and Senior Master of this court within four weeks from the date of uploading the order and provide unconditional bank guarantee in the sum of Rs.22 crores. Being aggrieved by the said order, the Appellants preferred both these Appeals.

5 In the present proceedings, Respondent Subhash Lodha and Sulabh Subhash Lodha had preferred Company Application No. 3/2019 praying for directions to the Appellants and other Respondent to pay their share in the property as per the Minutes of the Order dated 24.07.2015 passed by this court in Company Appeal No.25/2009. Prayer clauses (a) to (c) of the said application read thus:

*“(a) That this Hon'ble Court be pleased to direct the Respondents to pay to the Applicants the fair value of their 25% shareholding held in the Respondent No.1 Company as per the valuation report dated 26.04.2019 submitted by the appointed valuer - PWC under Option one titled as “With Development Rights of Bhosari Property, with TDR” under the scenario - “With TDR, Without SEPL encumbrance”, along with interest thereon in terms of the undertakings given by the Respondents in the Minutes of Order by Consent dated 24.07.2015 and taken on record vide order dated 24.07.2015 passed by this Hon'ble Court disposing off Company Appeal No.25 of 2009.*

*b. Pending the hearing and final disposal of this Company Application, this Hon'ble Court be pleased to direct the Respondents to forthwith deposit with this Hon'ble Court an amount equivalent to the fair valuation of the 25% shareholding of the Applicants held in the Respondent No.1 Company as per the valuation report dated 26.04.2019 submitted by the appointed valuer - PWC under Option two titled as “With Development Rights of Bhosari Property, without TDR” under the scenario- “Without TDR, with SEPL encumbrance”, along with interest thereon in terms of the undertakings given by the Respondents in the Minutes of Order by Consent dated 24.07.2015 and taken on record vide order dated 24.07.2015 passed by this Hon'ble Court disposing off Company Appeal No.25 of 2009.*

*c. In the event prayer (b) above is allowed, then pending the hearing and final disposal of this Company application, upon such deposit of amount by the Respondents the Applicants be permitted to withdraw the amount deposited by the Respondents with this Hon'ble Court subject to the Applicants unconditionally depositing with this Hon'ble Court the Applicant's shares bearing distinctive numbers from 3751 to 5000 and 24050 to 43098 constituting 25% of the total paid up equity share capital of Respondent No.1 Company along with duly signed share transfer forms, subject to further orders of this Hon'ble Court”.*

6 Mr.Seervai, the Learned senior counsel for Respondent Nos.1 and 2 in Appeal (L) No.555/2019 and Mr.Jagtiani, Learned counsel appearing for Respondent Nos.1 and 2 in Appeal (L) No.546/2019 raised preliminary issue about maintainability of the Appeals itself.

7 Mr.Seervai, the Learned senior counsel for Respondent Nos.1 and 2 submits that in the present proceedings, the order passed by the Learned Single Judge dated 09.10.2019 in Company application No.3/2019 is arising from the proceedings u/s.10-F of the Companies Act 1956 (Companies Act) and hence the present Appeals are not maintainable. He submits that the Appeals against the said proceedings are maintainable only before the Supreme Court.

8 The Learned senior counsel for Respondent Nos.1 and 2 submits that in the present proceedings, initially, the litigation was started by Company Petition No.28/2005. Against the decision of the said Company petition, an appeal was preferred u/s.10-F of the Companies Act, wherein both the parties had filed consent minutes of order dated 24.07.2015, and the matter was disposed of accordingly. He submits that pursuant to the liberty granted as per the minutes of order dated 24.07.2015 they preferred Company Application No.3/2019 before the Learned Single Judge of this court. He submits that as per clause xvi of the said minutes of order, liberty was granted to the parties to approach this Court, in the event of any difficulty in implementation of directions contained in the said consent

minutes of order. He submits that for deciding the amount of share of respective parties, it was decided by the Minutes of Order that they will appoint the Price Water House Cooper as a Valuer to value the share and to decide the market value of the same. He submits that after submitting the report by the Price Water House Coopers, the Appellant was supposed to pay them their share. He relies on clause iv, v, ix xvi of the consent minutes of order which read thus:

*“iv. Based on the valuation of PWC, the Appellants shall pay to the Respondent Nos.1 and 2 within a period of 8 weeks from the submission of Valuation Report by PWC, by demand draft an amount equivalent to 25% of the valuation arrived at by PWC by excluding the value of the Bhosari property along with simple interest on the aforesaid amount at the rate of 15% per annum calculated from 17.01.2008 till actual payment.”*

*“v. Additionally, based on the valuation of PWC along with making payment as per clause (iv) above, the Appellants shall pay to the Respondent Nos.1 and 2 by demand draft an amount equivalent to 25% of the value of the 12 Row Houses as determined by PWC in which the Appellant No.1 Company has interests, situated at the Bhosari Property along with simple interest on the aforesaid amount at the rate of 15% per annum calculated from 17.01.2008 till actual payment, within a period of 8 weeks from the submission of Valuation Report for the said Row Houses by PWC.”*

*“ix. Within a period 2 weeks from the date of submission of the Valuation Report by PWC in respect of the Bhosari Property, the Appellants shall create security in the form of unconditional bank guarantee and furnish the same to the Respondent Nos.1 and 2 to secure the amount equivalent to the balance amount as valued by PWC (taking into account the valuation of Bhosari Property) along with the simple*

*interest thereon at the rate of 15% per annum calculated from 17.01.2008 upto the date of valuation report.”*

*“xvi. Liberty granted to parties to approach this Court in the event of any difficulty in implementation of directions contained herein.”*

9     *The Learned senior counsel for Respondent Nos.1 and 2 submits that bare reading of the order dated 09.10.2019 passed by the Learned Single Judge, clearly shows that the appeal filed by the Appellant, is not maintainable before this court. He submits that the Appellant had raised objection before the Learned Single Judge that the application filed by Respondent Nos.1 and 2 is not maintainable in view of section 634 of the Companies Act which reads thus:*

***634. Enforcement of orders of Courts :***

*Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.*

10    The Learned senior counsel for Respondent Nos.1 and 2 submits that the Appellant had also raised the objection before the Learned Single Judge that, in view of section 36 of the Code of Civil Procedure, 1908 the application filed by Respondent Nos.1 and 2 is not maintainable. He submits that the Learned Single Judge has considered the said objection and held that the application, as it was filed by the Respondent, was maintainable.

11    The Learned senior counsel for Respondent Nos.1 and 2 submits that in view of the provisions u/s.10-F and 483 of the Companies Act and section 100-A and 104-(1) of the Code of Civil Procedure, 1908, the Appeals filed by the

Appellant are not maintainable. He submits that bare reading of the title of the Company Application No.3/2019 shows that the same is arising out of the proceedings in the Company Petition, therefore, the subsequent application in the main matter is required to be treated under the same provision. Therefore, in view of section 10-F of the Companies Act, the appeal filed by the Appellant itself is not maintainable.

12 In support of this contention, the Learned Senior Counsel relies on the judgment of the apex court in the matter of **Kamal Kumar Dutta & Anr. Vs. Ruby General Hospital (2006) 7 SCC 613**. He submits that in this authority, the Apex Court held that in such type of situation, the subsequent application shall be treated to be from the same proceedings and therefore, the bar of Section 10-F of the Companies Act is applicable i.e. appeal is maintainable before the apex court only. He relies on para 16 to 23, which read thus:

*“16. This order was challenged by filing appeal before Learned Single Judge of the Calcutta High Court. Learned Single Judge instead of going into minute details, examined the question with regard to the maintainability of the petition under Section 397 & 398 of the Act before the CLB. Learned Single Judge after examining all aspects came to the conclusion that the appellants have failed to make out a case under Section 397 of the Act for winding up of the company on the ground of just and equitable. But the Learned Single Judge recorded that Dr.Dutta acted prejudicial to the interest of the company and further held that the preconditions to have an order under Section 397/398 of the Act have not been made out and this aspect was not dealt with by the CLB at all.*

*Therefore, Learned Single Judge set aside the order of the CLB relying on a decision in the case of Hanuman Prasad Bagri & Ors. Vs. Bagree Cereals Pvt. Ltd. & Ors. reported in 115 Company Cases 493 and left the appellants to any appropriate remedy by way of company suit which can give the terminated director every relief. It was also observed that he can file a suit for injunction and declaration and get himself reinstated as a director or if he has been removed from a directorship, he could have filed a suit for declaration. Learned Single Judge accordingly set aside the order of the CLB.”*

*“17. Aggrieved against this order passed by the Learned Single Judge on 31.3.2005 the present Special Leave Petitions were filed by the appellants. We have given all necessary details about the whole affairs of the company from the order of the CLB to which we shall hereinafter refer to.”*

*“18. At the outset Learned senior counsel, Mr.F.S.Nariman, appearing for the respondents has raised a preliminary objection that the appellants have alternative remedy of approaching the Division Bench of the Calcutta High Court under Clause 15 of the Letters Patent. Therefore, this Court should not entertain these appeals and the same should be dismissed as the appellants have alternative remedy under clause 15 of the Letters Patent before the Calcutta High Court. We shall first dispose of the preliminary objection raised by Mr. Nariman with regard to the maintainability of the appeal against the order passed by Learned Single Judge of the High Court of Calcutta.”*

*“19. Appeal lies under Letters Patent from the judgment of the Learned Single Judge of the High Court to the Division Bench. In this connection, Learned counsel placed reliance on a decision of this Court in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury reported in 1957 SCR 488 and submitted that the appeal is vested right and it cannot be taken away. Alternative submission was if clause 15 does not apply, appeal lies under Section 483 of the Act. In this connection reliance was placed on*

*decisions of this Court in the case of Arati Dutta Vs. M/s. Eastern Tea Estate (P) Ltd. reported in (1988) 1 SCC 523 and in the case of Maharashtra Power Development Corporation Limited Vs. Dabhol Power Company & Ors. reported in [2003] 117 Company Cases 651. As against this, Learned senior counsel for the appellants submitted that Section 10F of the Act came into being with effect from 31.5.1991. Prior to that application under Sections 397 & 398 of the Act was being filed with the Company Judge in the High Court. But after the amendment of the Act by Act 31 of 1988, this power under Sections 397 & 398 of the Act has been given to the CLB. Under Section 10E of the Act, the Company Law Board was created. It deals with applications under Sections 397 & 398 of the Act. Therefore, Learned Single Judge has not exercised original jurisdiction and as such the appeal contemplated under clause 15 of the Letters Patent is not maintainable. Learned senior counsel invited our attention to Section 100A of the Code of Civil Procedure which came into being with effect from 1.7.2002. This section starts with non-obstante clause that notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge. Therefore, it was pointed out that in view of the latest amendment in the Code of Civil Procedure, Letters Patent or intra court appeal will not lie when the Learned Single Judge has exercised appellate jurisdiction. In fact, this amendment seems to have been brought about on the recommendations of the Malimath Committee report that right to appeal should be curtailed and only one appellate forum should be available. Therefore, in view of this recommendations, this amendment was brought about. In support of this contention Learned senior counsel invited our attention to the following decisions.*

- (i) *P.S.Sathappan (dead) by LRs. Vs. Andhra Bank Ltd. & Ors. (2004) 11 SCC 672*
- (ii) *Subal Paul Vs. Malina Paul (2003) 10 SCC 361*
- (iii) *Gandla Pannala Bhulaxmi Vs. Managing Director, APSRTC AIR 2003 AP 458 (FB)*
- (iv) *Rev. C.S.Joseph Vs. T.J.Thomas (1987) 62 Comp Cas 504 (Ker)*
- (v) *Kesava Pillai Sreedharan Pillai & etc. vs. State of Kerala & Ors. AIR 2004 Ker. 111 (FB)*

*“20 We have considered the rival submissions of the parties. The first question that we have to examine is whether the appeal against the order of the Learned Single Judge lies before the Division Bench under Letters Patent or not. It may be relevant to mention here that prior to the amendment of the Act, the power under Sections 397 & 398 used to be exercised by the Company Judge of the High Court. Appeal against that order of the Learned Single Judge lies under Section 483 of the Act before the Division Bench of the High Court. Section 483 of the Act reads as under :*

*" 483. Appeals from orders.- Appeals from any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."*

*“21. But after the amendment the power which was being exercised under Sections 397 & 398 of the Act by Learned Single Judge of the High Court is being exercised by the CLB under Section 10E of the Act. Appeal against the order passed by the CLB, lies to the*

*High Court under Section 10F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 was that any order passed by the Single Judge exercising the power under Sections 397 & 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment the power has been given to the CLB and appeal has been provided under Section 10F of the Act. Thus, Part 1A was inserted by the amendment with effect from 1.1.1964. But the constitution of the Company Law Board and the power to decide application under Sections 397 & 398 of the Act was given to the CLB with effect from 31.5.1991 and appeal was provided under Section 10F of the Act with effect from 31.5.1991. Therefore, on reading of Section 10E, 10F, 397 & 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 & 398 of the Act shall be dealt with by the CLB and the order of the CLB is appealable under Section 10F of the Act before the High Court. No further appeal has been provided against the order of the Learned Single Judge. Mr.Nariman, Learned senior counsel for the respondents submitted that an appeal is a vested right and therefore, under clause 15 of the Letters Patent of the Calcutta High Court, the appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the order of the Learned Single Judge under the Act. In this connection, Learned counsel invited our attention to a decision of this Court in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury reported in [1957] SCR 488 and in that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows : (SCR p.488)*

*"..... that the contention of the applicant was well-founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.*

*The vested right of appeal was a substantive*

*right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment either expressly or by necessary intendment."*

*"22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment either expressly or by necessary intendment. The Parliament while amending section 100A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1.7.2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of Learned single Judge to the Division Bench. Section 100A of the Code of Civil Procedure reads as follows:*

*100A. No further appeal in certain cases.-*

*Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge."*

*"23. Therefore, where appeal has been decided from an original order by a single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by the CLB and against that appeal has been provided before the High Court under Section 10F of the Act, that is an appeal from the original order. Then in that case no further Letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where*

*Learned single Judge hears an appeal from the original order. Original order in the present case was passed by the CLB exercising the power under Section 397 and 398 of the Act and appeal has been preferred under Section 10F of the Act before the High Court. Learned single Judge having passed an order, no further appeal will lie as the Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made in the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100A. The intendment of the Legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for itself. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising Letters patent in a matter where a single Judge has decided the appeal from original order, has been taken away and it cannot be invoked in the present context. There is no two opinion in the matter that when the CLB exercises its power under Section 397 & 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, the CLB while exercising its original jurisdiction under Section 397 & 398 of the Act passed the order and against that order appeal lies to the Learned single Judge of the High Court and thereafter no further appeal could be filed.”*

13 The Learned senior counsel for Respondent Nos.1 and  
2 also relies on the apex court judgment on same proposition in the matter of **Mohd. Saud and Anr. Vs. Dr. (Maj.) Shaikh Mahfooz & Ors. 2013(13) SCC 517.**

14 The Learned senior counsel for Respondent Nos.1 and 2 submits that bare reading of these two authorities of the apex court, clearly show that the Appeals, as it is filed by the Appellants are not maintainable before this court. He submits that the order passed by the Company Court in exercise of jurisdiction u/s.10-F of the Companies Act, is an order passed under that provision alone and the validity of which must be decided by approaching the appellate forum designated by law. He submits that the impugned order is passed by the Learned Single Judge in exercise of his powers under the Companies Act and in exercise of jurisdiction, as a Company Court. The said fact is evident from para 1, 6 and 8 of the impugned order.

15 The Learned senior counsel for Respondent Nos.1 and 2 submits that even the Appellant has acknowledged the assumption of Company Court jurisdiction u/s.10F of the said Act by the Learned Single Judge in alleging that the Company Court had exercised its jurisdiction erroneously in passing the impugned order and that the appropriate remedy would lie in execution. As such, by their own admission, the Appellants have distinguished the said company application and the impugned order as being distinguishable and different from the application for execution i.e. by submitting that the application ought to have been filed under the Code of Civil Procedure, 1908 for execution. In support of his contention, the Learned senior counsel for Respondent Nos.1 and 2 filed their brief submissions, summary of arguments and the judgments in support thereof. Those judgments are as under:

- (a) Ittayavira Mathai Vs. Varkety Varkey AIR 1964 SC 907
- (b) Nusli Neville Wadia Vs. Ivory Properties 2019 SCC Online SC 1313
- (c) Sumitomo Corporation Vs. CDC Financial Services (Mauritius) Ltd. 2008 (4) SCC 91
- (d) Rafique Bibi Vs. Syed Waliuddin 2004 (1) SCC 287
- (e) State of Punjab Vs. Amar Singh 1974 (2) SCC 70
- (f) Ram Kishan Fauji Vs. State of Haryana 2017 (5) SCC 533

16 On the basis of these submissions, Mr.Seervai, the Learned senior counsel for Respondent Nos.1 and 2 submits that the Appeals filed by the Appellants against the impugned order are not maintainable and same are liable to be dismissed.

17 The Learned counsel Mr. Jagtiani appearing for Respondent Nos.1 and 2 in Appeal (L) No.546/2019 also raised objection about maintainability of the appeal. He submits that bare reading the impugned order passed by the Learned Single Judge clearly shows that the same was passed in a matter arising out of the Company Petition. He submits that the Learned Single Judge has categorically recorded in the order that, same is passed in exercise of the company jurisdiction in accordance with the provisions of the Companies Act 1956. Therefore, the order will have to be challenged in accordance with the procedure stipulated under the law i.e. by filing SLP before the Hon'ble Supreme

Court. He submits that the Division Bench of this court in the matter of **Shailendra Bhadauria & Ors. Vs. Matrix Partners India Inv. 2018 SCC Online Bom. 13804**, while considering whether the maintainability of Appeals was to be tested on the basis of the powers exercised by the Court in granting relief, held that, if the Appeal itself was not maintainable, then the Appellate Court could not go into the merits of the matter to decide, whether the powers exercised by the Court were excessive or beyond jurisdiction. He relies on para 34, 36 and 43 of the said judgment which read thus:

*“34. Hence, this is not a case where the Learned single Judge has, in addition to or by utilising or invoking his substantive powers under Order XXXIX of the CPC, granted any relief over and above the interim measures. The prayers in the chamber summons, firstly, directs the appellants/debtors to declare their bank accounts, seeks to restrain them and persons claiming through them from operating their bank accounts listed in Schedule-B to the execution application, then to appoint a Receiver but which relief has not been granted. The prayer clause (d) directs the appellants to disclose on affidavit the particulars of their assets, including the complete particulars of the debtors along with their addresses, under Order XXI Rule 41 of the CPC. The impugned order directs such disclosures but it is evident that these disclosures are directed so as to give effect to the interim measures ordered by the Arbitral Tribunal. Whether they should have been directed or not is not the debate before us nor it can be debated once we hold that the appeals themselves are not maintainable. However, we clarify that this is an ad-interim order and direction. It would be open for the appellants to argue, in the event the chamber summons has to be fully and totally argued, that such directions need not be issued or are uncalled for given the interim measures ordered by the Arbitral*

*Tribunal or that they go beyond the same, that without prejudice to the same the disclosures as are already made on oath are enough to give effect to the interim measures ordered by the Arbitral Tribunal. On this aspect, we do not foreclose the arguments of both sides but keep them open.”*

*“36. In the facts and circumstances of the present case, we do not think that the Learned single Judge has made any order either taking recourse to the substantive powers conferred by the CPC or has usurped the jurisdiction or has purported to pass orders beyond the ambit and scope of his powers as a Civil Court. If such an order and direction had been passed and issued during the course of exercise of the power vesting in the Executing Court and if an appeal lies against such orders within the scheme of Order XLIII Rule 1 of the CPC, or Section 37 of the Arbitration Act, then, the matter would have been approached and looked at from a different angle. Such is not the position before us.”*

*“43 We cannot then take recourse to Clause 15 of the Letters Patent which has been specifically overridden by the non-obstante clause in sub-section (2) of Section 13 of the Commercial Courts Act, 2015. That would mean we can entertain an appeal otherwise than in accordance with the provisions of the Commercial Courts Act, 2015. That would also mean that in cases of orders, unless these are specifically enumerated in Order XLIII Rule 1 of the CPC, as amended by the Commercial Courts Act, 2015, and Section 37 of the Arbitration Act, may be non-appealable but they would be otherwise appealable because they are judgments. By that process any judgment or order which is not an order or decree as understood by the CPC but is a judgment within the broad sweep of Clause 15 of the Letters Patent, would be appealable though the Letters Patent has been specifically overridden by the Commercial Courts Act, 2015. As held above, this Law is a complete Code by itself, then, we cannot accept the argument of Mr. Andhyarujina that the impugned order is a judgment and therefore is otherwise appealable. This is the*

*precise reason why the Commercial Courts Act, 2015 has been brought in. We have noticed that unmindful of the language of Section 105 of the CPC which we have reproduced above, every interlocutory order and passed during the course of the proceedings was termed as a judgment and merely because it had detailed reasons, it was presumed that it was an appealable order. Multiple appeals were filed and entertained by this Court regularly in exercise of the powers derived from its Letters Patent. We have seen number of appeals entertained even in execution matters. It may be that these orders discuss in detail the controversy and assign reasons for the conclusion but unless and until by law they were made specifically appealable nobody could have challenged them. Though they were not appealable orders and decrees within the scheme of the CPC, by relying on the wording of Clause 15 of the Letters Patent, appeals were routinely filed in this Court. Such appeals being filed routinely and entertained, delayed the main proceedings. We are witness to a tragic scenario in which the main proceedings are lingering and pending in this Court for 20 years. Merely because interlocutory orders during the course of a trial of a suit or execution were challenged and the challenges were entertained, the suit was not heard by this Court for nearly two decades. The decrees and orders passed decades back were not enforced and executed only because the objections raised by the Judgment-Debtors and parties claiming through them though rejected, appeals were entertained and the enforcement and execution of decrees/orders was stayed. Such appeals themselves were not heard in the Bombay High Court for years together may be because of paucity of Judges. This tarnished the name of this Court and the Judiciary itself. That was the experience prior to the Commercial Courts Act, 2015 intervening. This scenario was not healthy by any standards, whether in the world of commerce or otherwise. All the more in a competitive commercial world, the disputes arising during the course of business, need early and expeditious resolution. That intent and purpose was wholly frustrated and defeated by the long drawn proceedings and devised*

*only on account of forensic skill and ingenuity of the party and the Bar. This had to be avoided at all costs and once the Parliament stepped in, what it prohibits directly cannot be achieved in an indirect and oblique manner. This is the precise motive and intent, which the appellants seek to achieve, by the argument canvassed before us by Mr. Andhyarujina. In the circumstances, we do not think that the plain language of Section 13 which has to be read harmoniously with the CPC, as amended by the Commercial Courts Act, 2015, and the sections of the Arbitration Act, particularly Section 37 thereof, would permit entertaining the instant appeals.”*

18 The Learned counsel Mr.Jagtiani appearing for Respondent Nos.1 and 2, in support of his contention, relies on the judgment of this court in the matter of **Jet Airways (India) Ltd. and Sahar Airlines Vs. Subrata Roy Sahara and 2012 (2) AIR Bom R 855**. He also relies on the Apex Court judgment in the matter of **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. (2011) 8 SCC 333**. Para 89 thereof reads thus:

*“89. It is, thus, to be seen that Arbitration Act 1940, from its inception and right through 2004 (in P.S. Sathappan) was held to be a self-contained code. Now, if Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self- contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it "a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done". In other words, a Letters Patent Appeal would be*

*excluded by application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.”*

19 The Learned counsel Mr.Jagtiani appearing for Respondent Nos.1 and 2 submits that even the Delhi High Court in the matter of **Anand Finances Pvt. Ltd. Vs. Bank of Baroda 1980 17 DLT 334** held that the provisions of the Code of Civil Procedure, 1908 are not applicable to such proceedings. Para 12 thereof reads thus:

*12. In our opinion the Learned single Judge has rightly held that the provisions of the Code of Civil Procedure are not applicable to such proceedings. There is no provision under the Companies Act which make provisions of Orders 21 or 34 applicable as such. Reliance has been placed on behalf of the respondent on Section 634 of the Companies Act. Section 634, in our opinion, does not make any substantive provision of the Code of Civil Procedure applicable to the Company Court. Section 634 is only an enabling provision. It enables an order of the Court to be enforced by deeming it to be a decree. Whether such an order which can be enforced should be allowed to stand or varied, recourse would have to be had only to the provisions of the Companies Act and not to the technical provisions of Orders 21 or 34. There is no provision in the Companies Act which extends the provisions of the Code of Civil Procedure to such proceedings under the Companies Act. An order passed in the exercise of jurisdiction under the Companies Act cannot be set-aside or modified by taking recourse to the provisions of the Code of Civil Procedure.*

20 On the basis of these submissions the Learned counsel Mr.Jagtiani appearing for Respondent Nos.1 and 2 submits that the Appeals filed by the Appellant are not maintainable. Hence, same are liable to be dismissed with

costs.

21 On the other hand, Mr. Aspee Chennoy, the Learned senior counsel for the Appellant submits that the objections raised by the Respondents, about maintainability of the Appeals, are not sustainable, because in the present proceedings, the Respondent had filed Company Application No.3/2019 for execution of the Minutes of Order dated 24.07.2015 in Company Appeal No.25/2009. He submits that bare reading of Company Application No.3/2019 filed by the Respondent clearly shows that they are seeking execution of the Minutes of Order dated 24.07.2015. Company Application No.3/2019 can not be treated as continuation of Company Appeal No.25/2009. He submits that for execution of the Minutes of Order dated 24.07.2015, there is separate provision under the Companies Act. He submits that as per section 634 of the Companies Act, same can be enforced in the same manner as a decree made by the Court in a suit pending therein.

22 The Learned Senior Counsel for the Appellants submits that in the present proceedings, the Respondents had filed Company Application No.3/2019 with a prayer directing the Appellants to pay the fair value of their 25% share-holding and other reliefs. This itself shows that the application filed by the Respondents was according to the provisions of the Code of Civil Procedure, 1908. Once the application is filed under the provisions of the Code of Civil Procedure, 1908, then against any order passed by the Court, an Appeal is maintainable before this court. Hence,

the Appeals preferred by the Appellant are maintainable. He submits that the said issue was not raised by the Respondents before the Learned Single Judge. Therefore, there is no question of entertaining the said issue at the appellate stage.

23 The Learned Senior Counsel for the Appellants submits that as the Respondent had made application No.3/2019 under the provisions of the Code of Civil Procedure, 1908, there is no question of any bar of section 10-F of the Companies Act. Hence, the Appeals filed by the Appellants are maintainable and same are required to be decided on their own merits. He submits that the Authorities cited by both the counsel for the Respondents are not applicable in the facts and circumstances of the present case. The objections raised by them as regards the maintainability of the Appeals do not sustain. Hence, the Appeals are required to be decided on its own merits.

24 We heard the Learned Senior Counsel and the Learned counsel for the respective parties at length. First, both the counsel argued the matter on preliminary objection i.e. maintainability of the Appeals. They also made submissions on merits of the matter. But as we have decided to hear the objections raised by the Learned senior counsel Mr. Navroz Seervai appearing for Respondent Nos.1 and 2 about the maintainability of the Appeals itself, there is no question to consider the merits of the matter, if Appeals are not maintainable.

25 It is to be noted that in the present proceedings initially, the litigation was started by way of Company Petition. Thereafter the appeal was preferred u/s.10F of the Companies Act before the Company Court. Thereafter the Company Appeal was disposed of by the Learned Single Judge on the basis of the consent minutes of order dated 24.07.2015. This itself shows that the present litigation arises under the Companies Act and particularly under section 10-F of the said Act. Though the Company Petition as well as the Appeal was disposed of by this court in terms of the consent minutes of order dated 24.07.2015, but subsequent application filed in that proceeding is required to be treated under the same Act i.e. the Companies Act 1956. Therefore, the contentions raised by the Learned Senior Counsel for the Appellants that the Appeals filed by them are maintainable, because the Application filed by the Respondent was as per the provisions of the Code of Civil Procedure, 1908 and not u/s.10-F of the Companies Act is not acceptable. In any case, whether the Application was rightly filed by the Respondents or not, that cannot be a question and to be decided in the present Appeals. In the present Appeals, the question is whether the impugned order passed by the Learned Single Judge can be challenged before this court in view of the bar under the Companies Act, because the Appeal is maintainable only before the Apex Court. If any application is decided by the High Court in a proceeding arising out of section 10-F of the Companies Act, in that case the appeal is required to be filed before the Apex Court.

26 It is to be noted that the Authorities cited by the counsel appearing on behalf of the Respondents, clearly show that the Appeals are not maintainable before this court. Even in similar situation, a Division Bench of Delhi High Court in the matter of **Anand Finances Pvt. Ltd.** (Supra), in paragraph 12, specifically held that the appeal is maintainable only before the Apex Court.

27 Bare reading of the written submissions/statements filed by the parties and the authorities cited by them clearly show that, if the order is passed in a proceeding u/s.10-F of the said Act by the High Court, then the appeal is maintainable only before the Apex Court. This is considered by the Learned Single Judge and held that the Company Court has jurisdiction to entertain the said application No.3/2019. The Learned Single Judge decided the Application No.3/2019 in his capacity as a Company Judge, under section 10-F of the Companies Act and not as the Executing Court. Though, it is contended on behalf of the Appellants that the Learned Judge committed error in not treating the Application as Execution Application, in our view, a Division Bench of this Court cannot be the appellate forum in this case to decide this issue. As observed in paragraph 34 in the case of Sumitomo Corporation Vs. CDC Financial Services (Mauritius) Ltd. (Supra), the Appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings. Therefore, the objection raised by the Respondents about the maintainability of the appeal is required to be upheld.

28 In view of these facts, though both the counsel argued the matter on merits, it is not necessary to go into the merits of the matter, because the Appeals are not maintainable before this court.

29 Hence, both the Appeals stand dismissed.

30 No order as to costs.

31 In view thereof, all the Interim Applications, if any, shall stand dismissed as infructuous.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)