



O.S.A. (CAD) Nos.163, 165 & 166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

O.S.A.(CAD).Nos.163, 165 and 166 of 2021
and C.M.P.No.7312 of 2020

M/s.Digital Data Forms (P) Ltd.
Represented by its Director
Mr.S.B.P.S.Krishna Mohan,
No.88, Commander-in-Chief Road,
Egmore, Chennai-600105.

... Appellant in all appeals/
Applicant/Defendant No.1

Vs.

M/s.Integrated Finance Company Limited
Vairams,
No.112, Thyagaraya Road,
T.Nagar, Chennai-600 017.

... Respondent in all appeals/
Respondent/Plaintiff

* * *

Prayer : Original Side Appeals filed under Clause 15 of Letters Patent and Section 13(1A) of the Commercial Courts Act against the fair and decretal order/judgment dated 17.08.2021 made in A.Nos.2660, 2661, 2662 and 2663 of 2021 in C.S.No.839 of 2007 respectively.

* * *

For Appellant in : Mr.K.Bijai Sundar
all the appeals for Mr.K.K.Muralidharan

For Respondent : Mr.V.P.Raman
in all the appeals



COMMON JUDGEMENT

PUSHPA SATHYANARAYANA, J.

Aggrieved by the order dated 17.08.2021 passed in Application Nos.2660 to 2663 of 2021 in C.S. No.839 of 2007, the first defendant in the suit has filed these original side appeals.

2. The suit was filed by the respondent herein for recovery of a sum of Rs.1,92,94,535.15, which is a due payable by the appellant in Hire Purchase Agreement dated 30.03.1996. The trial of the suit was over and it was posted for arguments. At that stage, the appellant herein/first defendant, filed Application Nos.2660 to 2663 of 2021, under Order XVIII Rule 27 of CPC, seeking permission to reopen the case, to recall PW1 and to file additional documents. The document that is sought to be marked is the statement of accounts for the Hire Purchase Agreement No.456, which is the basis for the suit and also the payment receipt for another agreement, which is Hire Purchase Agreement No.67. The reasons stated in the affidavit filed in support of these applications are that the plaintiff has suppressed the existence of Hire Purchase Agreement No.67 and the payments made towards the discharge of the said Hire Purchase Agreement. Since the plaintiff had suppressed the payments made by the defendants, the appellant is now seeking to mark



the statement of accounts, which was issued by the plaintiff to the appellant.

3. The applications were contested by the plaintiff contending that by producing these documents, the first defendant/appellant, wanted to withdraw the earlier stand taken in the written statement.

4. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

5. Admittedly, the suit is for recovery of money based on Hire Purchase Agreement No.456, which has got nothing to do with the Hire Purchase Agreement No.67. Therefore, the learned single Judge had dismissed these applications stating that the production of those documents either necessary or proper for determining the dispute in the suit. Aggrieved by the said order, the above appeals are preferred.

6. Though the suit was filed prior to the constitution of the Commercial Division, the orders impugned before us, is passed by the Commercial Division after its constitution. Therefore, whether an appeal



under Section 13 of the Commercial Courts Act, 2015 is maintainable, has to be seen.

7. The learned counsel appearing for the respondent would contend that these appeals are not maintainable, as the order impugned did not fall within the category of orders enumerated under Order XLIII of the Code of Civil Procedure, 1908.

8. Section 13 of the Commercial Courts Act, 2015, deals with appeals from decrees of commercial courts and commercial division, which reads thus:

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



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section 37 of the Arbitration and Conciliation Act, 1996 (26 of 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.

The above proviso to Section 13 categorically states that, an appeal would lie from such order passed by the Commercial Division only those that are specifically mentioned in Order XLIII of the CPC.

9. As stated earlier, the applications are filed under Order XVIII Rule 17 CPC to reopen, recall and receive additional documents. A look at Order XLIII shows that no appeal is provided for against any order passed under Order XVIII Rule 17 CPC.

10. The learned counsel appearing for the appellant placed his reliance on a decision of the Division Bench of this court in ***Rubinetterie Bresciane Bonomi SpA vs. Lehry Instrumentation & Valves Pvt. Ltd.*** reported in **2019(4) CTC 188**, wherein, the Division Bench at paragraph Nos.19 to 21, held as under:

19. To sum it up:

(a) A right of appeal under Clause 15 of the Letters Patent is available from all Orders passed in any proceedings



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in any suit pending on the date of commencement of Commercial Courts Act.

(b) So far as the present two appeals (of which one is yet to be taken on record) are concerned, since they do not constitute 'judgments' within the meaning of Clause 15 of the Letters Patent, no appeal is maintainable against them.

20. In the course of his arguments, the learned counsel for the appellant has submitted that the evidence, both documentary and oral that are now produced and rejected, are essential to defend the suit C.S.891 of 2015 instituted by the respondent. But then, that necessity opens only when the respondent discharges its burden in its suit, and it depends on the quality of evidence that the respondent may chose to produce in aid of the cause of its action. May be, for procedural convenience, the appellant might have anticipated it and might have attempted to produce some contra evidence perhaps without anything substantial to counter at this moment. That, at any rate cannot take away the appellant's right to defend an action when the respondent in its suit actually discharges its initial burden. And, the Orders now impugned cannot preempt what might arise in future, as there cannot be any anticipatory foreclosure of the right to lead in evidence that may not endanger or offend the right to defend an action in a manner in which the adversarial jurisprudence that we have adopted has come to recognise and accept. That then is sure to leave serious consequences. Necessarily the appellant's right to produce all the evidence that is under its command to produce in defence of respondent's action will remain preserved, and it will be at liberty to produce them, if so required and felt necessary.

21. To conclude, O.S.A. No.252 of 2018 is not maintainable, not because the appeal is not maintainable



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under the Commercial Courts Act, but because the Order impugned does not qualify for an appeal under Clause 15 of the Letters Patent, and is hence dismissed. Since the other appeal which is yet to be taken on record in O.S.A. SR.33496 of 2018 faces an identical consequence, this Court chooses to not condone the delay, and accordingly C.M.P.No.12023 of 2018 filed therein is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

In the above case, the appeal was preferred in the year 2018 under clause 15 of the Letters Patent challenging the order passed in the year 2017 on the Original Side of the Madras High Court on 24.07.2017, whereas the Commercial Division of the Madras High Court was constituted on 29.11.2017. Hence after constitution of the Commercial Division, the appeal was not entertained, as the order impugned, did not qualify for an appeal under Clause 15 of the Letters Patent and hence it was dismissed.

11. The next judgment that was relied on by the learned counsel for the appellant is ***Kapoor Imaging Pvt Ltd vs. Kodak India Pvt. Ltd. dated 05.02.2020 made in O.S.A. Nos.13 to 15 of 2020***, wherein the Division Bench of this court at paragraph Nos.7 and 8, held as under:

"7.Order 11 Rule 1(5) and Order 11 Rule 7 C.P.C. also do not prevent the appellant from seeking appropriate relief. If



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we see Order 11 Rule 1(5) C.P.C., it speaks about the appeal filed at the first instance. Secondly, Order 11 Rule 7 C.P.C. makes the position clear that certain provisions shall not be applicable to the suits or applications before the Commercial Court. Even assuming that this sub rule is applicable, the power under Section 15 of the Act cannot be taken away. This we hold notwithstanding our view that the right available under the Code of Civil Procedure to a plaintiff in a suit which has been transferred subsequently cannot be taken away when a right is substantive in nature. The right for claiming relief is substantive and therefore not procedural.

8.Having held that the applications are maintainable, we find that even on merit, the order requires to be interfered with. Learned single Judge applied the rigours of the Act. The suit itself is one for recovery of money on the claim of damages. Now, there is a counter claim. The transfer itself has been effected during the fag end of the year 2018. The issues have been framed only on 17.09.2019."

12. However, in a subsequent appeal by the same appellant in ***Kapoor Imaging Pvt Ltd vs. Kodak Polychrome Graphics Asia Export Private Limited & Others*** reported in **2021 (3) CTC 871**, which was relied on by the learned counsel for the respondent, the Division Bench found that the orders impugned were passed by the Commercial Division and the right of appeal is governed by Section 13 of the Commercial Courts Act and the appeals were not maintainable, as the orders did not fall within the category of orders specified in Order XLIII of



the CPC. In the said judgment, the Division Bench of this court, in paragraph Nos.40 and 41, held as under:

40. Section 13 of the CCA deals with "appeals from orders" or "decrees" of "Commercial Courts and Commercial Divisions". Sections 13 (1) and 13 (1A) provides that "any person" who is aggrieved by a judgment or order of the Commercial Court, can prefer an appeal. But, it does not provide the nature of orders that would be appealed against. The proviso to Sections 13(1) and 13(1A) of CCA indicates that an "appeal" shall lie from such of those orders passed by a Commercial Division or a Commercial Court that are specifically enumerated thereunder, namely (i) Order 43 of CPC as amended by the Commercial Courts Act and (ii) Section 37 of the Arbitration and Conciliation Act, 1996.

41. In the instant case, the order was passed by the learned Single Judge in a transferred suit, which was originally filed before the Original side of this Court, and subsequently transferred to the Commercial Division of this Court. The proceedings were governed by Section 15 (1) of the CCA, 2015. As per sub~clause (5) to Section 15, the provisions of the Act will apply to those proceedings that were not complete at the time of transfer. These appeals were not filed under Order 43 Rule 1 of CPC. It has been filed under Order 36 Rule 1 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent.

13. The learned counsel for the respondent produced yet another judgment passed in **Aarur Tamilnadan vs. S.Shankar and others**



made in **O.S.A. Nos.15 to 18 of 2021 dated 08.07.2021**, wherein the

First Bench of this Court held as under:

"3.....Though Section 13 (1A) permits any person aggrieved by a judgment or order of the Commercial Division of the High Court to prefer an appeal before the Commercial Appellate Division of that High Court, the proviso to such sub-section limits the scope of the appeal and confines the appeals to such matters and nature of orders as are "specifically enumerated under Order XLIII of the Code ...". To boot, Section 13 (2) of the Act mandates as follows:

"(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."

Thus, the body of the jurisprudence that had developed as regards appellability under Clause 15 of the Letters Patent becomes redundant in commercial suits. The effect of Section 13 (2) of the Act is that appeals previously provided in respect of orders in suits filed on the Original Side of this Court would no longer be maintainable since Clause 15 of the Letters Patent would not apply if the suit was a commercial suit and only Order XLIII of the Code would be applicable.

4. Since the nature of the application in the present case is not one which is enumerated in Order XLIII of the Code as being appellable, the present appeal in the commercial suit is not maintainable under Section 13 of the Act of 2015 which has to be seen as the only repository of judgments and orders against which appeals may be carried, since the right to prefer an appeal under the Letters Patent has been done away with in the provision.



From the above referred judgments, it is very clear that unless it is already provided for under Order XLIII, the appeals will not be maintainable under Section 13 of the Commercial Courts Act, 2015.

14. In ***Kandla Export Corporation and Another vs. OCI Corporation and Another*** reported in ***(2018) 14 SCC 715***, the Hon'ble Supreme Court held that Section 13(1) of the Commercial Courts Act, is in two parts. The main provision is 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. 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.

15. The judgment has further categorically held that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated in Order XLIII of the Civil Procedure Code, 1908 and Section 37 of the Arbitration Act. Those orders that are



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not specifically enumerated in Order XLIII CPC, would, therefore be not appealable.

16. In the light of the above judgments, we have to hold that the applications are not appealable under Order XLIII of the Civil Procedure Code, 1908 and hence the appeals filed under the Letters Patent are also not maintainable. It is also not out of place to mention that subsequent to these applications, which were dismissed, the appellant seems to have filed Application Nos.4632 to 4634 of 2021 in C.S. No.839 of 2007, to reopen the evidence on the side of the defendants, to recall DW1 and to receive 16 additional documents, which were also dismissed on 12.01.2022, with cost. As Commercial Division cannot entertain applications for a not justifiable cause and there is no explanation on the part of the appellant for the delay in filing of the applications, the learned single Judge had rightly dismissed the applications.

17. Accordingly the Original Side Appeals are also dismissed as not maintainable. Consequently, the connected civil miscellaneous petitions are closed.

(P.S.N., J.) (S.K., J.)
23.02.2022

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