

04 **10.01.**
2023
Ct. No. 37

Ab

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division).

FMAT 251 of 2022
IA No. CAN 1 of 2022

Subhashish Addy
Vs.
Haripada Das and others.

Mr. Anindya Bose,
Mr. Diptendu Mondal,
Mr. Mridul Biswas.

... for the appellant.

Mr. Jayanta Sengupta,
Ms. Shebatee Datta.

... for the respondent no. 2.

Mr. Tanmoy Chakraborty,
Ms. Mahasweta Mukherjee.

... for the private respondent.

Though the application is listed today, but after perusing the impugned order, we invited the attention of the learned Advocate for the appellant to satisfy us whether the appeal filed against the impugned order is maintainable.

A money suit was pending before the Commercial Court at Asansol and a plea was taken that the cause of action pleaded therein does not fulfil and satisfy the condition of the commercial dispute envisaged under Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as 'said Act'). The Commercial Court was of the view that the said suit is not maintainable before the Commercial Court, as it does not satisfy the definition of commercial dispute engrafted under Section 2(1)(c) of the said Act and sent the said suit back to the appropriate civil court from which it was transferred to the Commercial Court.

Though the learned Advocate for the appellant is very much critical on the above aspect that there is a wrong finding made in the said order, but we invited his attention whether the appeal is maintainable against such order. Section 13 of the said Act postulates that the order of the Commercial Court below the level of District Judge is appellable to a Commercial Appellate Court. However, an amendment was brought in the year 2018 by inserting Sub-Section (1A) thereof, wherein the proviso restricted the applicability of the appellate provision to a specified class of the orders enumerated under Order XLIII of the Code of Civil Procedure as well as Section 37 of the Arbitration and Conciliation Act, 1996.

It is no longer *res integra* that the remedy of appeal is a creature of statute. Unless the statute provides that the certain class of orders is appellable one, by logical inferences one cannot assume the remedy by way of an appeal. The moment the class of orders have been restricted in the proviso inserted to Sub-Section (1A) of Section 13 of the said Act, any order which is not contemplated within the Order XLIII of the Code cannot be regarded as appellable one and the remedy by way of an appeal can not be explored and/or exhausted taking recourse to Section 13 of the said Act.

A point has been taken that there is a complete embargo created under Section 8 of the said Act in approaching a revisional forum. Since the nature of the impugned order in the instant appeal does not confirm to the nature of the order incorporated under Order XLIII of the Code and the appeal being not maintainable, we do not intend to make any comment thereupon. It is open to the appellant to take appropriate steps in this regard.

The appeal is dismissed as 'not maintainable'.

In view of the dismissal of appeal itself, the connected application has become infructuous and the same is also dismissed.

The Assistant Court Officer is directed to return the certified copy of the impugned order to the Advocate-on-Record of the appellant upon replacement with photocopy thereof.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)