

04 30.03.23

Ct. No. 37

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In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division

F.M.A. 1379 of 2022
CAN 1 of 2022

Kolkata Metropolitan Development Authority

Vs.

BBT Elevated Road Pvt. Ltd. & Ors.

Mr. Prabal Mukherjee,
Mr. Sirsanya Bandyopadhyay,
Mr. Avishek Guha,
Ms. Akansha Chopra,
Ms. Debarati Das.

... for the appellant.

Mr. Satadeep Bhattacharyya,
Mr. Iram Hassan,
Mr. Sanket Sarawgi,
Mr. Subhajit Ghosh.

... for the respondent no. 1.

A preliminary point has been raised by the respondent that the instant appeal is not maintainable having not satisfied the provisions enshrined in Section 13 of the Commercial Courts Act, 2015. The aforesaid Section is quoted as under:

“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.

(1-A) 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 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 instant appeal arises from an order rejecting an application for acceptance of the counter-claim. By virtue of Section 13(1-A) of the said Act any person aggrieved by a judgement or order of the Commercial Court at the level of District Judge may appeal to the Commercial Appellate Division of the High Court provided such order is enumerated under Order XLIII of the Code of Civil Procedure.

Since the proceeding before the Commercial Court does not arise from an arbitral proceeding or initiated under the Arbitration and Conciliation Act, 1996, we are not concerned with other remedy of appeal provided in the said proviso to Sub-section (1-A) of Section 13 of the Act. The nature of the order passed in the instant appeal has not been included within the four corners of Order XLIII of the Code of Civil Procedure and, therefore, the remedy by way of

an appeal cannot be resorted to.

The appeal, therefore, is not maintainable. The same is dismissed.

However, the dismissal of the instant appeal does not prevent the appellant to pursue other remedy available to it against the impugned order.

Learned Advocate for the appellant is permitted to take back the certified copy of the impugned order by furnishing a photocopy thereof by tomorrow.

In view of dismissal of the appeal itself the connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)