

ORDER

OCD-1

APOT/70/2023
WITH
CS/36/2020
IA NO: GA/1/2023
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PUNJAB NATIONAL BANK
VERSUS
MERCURY EXPORTS AND MANUFACTURING PVT. LTD.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON
THE HON'BLE JUSTICE PRASENJIT BISWAS
[COMMERCIAL DIVISION]

Date : 23rd March 2023.

APPEARANCE:

Mr. Joy Saha, Sr. Advocate
Ms. Aparajit Rao, Advocate
Ms. A. Basu, Advocate
...for the appellant

Ms. R. Dutta, Advocate
Mr. S. Bhattacharya, Advocate
...for the respondent

The Court:- A preliminary objection has been raised by the appellant that the instant appeal is not maintainable. It is contended that the application seeking extension of time to file written statement has been dismissed by the impugned order and, therefore, proviso under Section 13 of the Commercial Courts Act, 2015 created an embargo in maintaining such appeal.

It is no doubt true that the appeal is a creature of the statute. Unless the statute provides the remedy by way of an appeal, the remedy of appeal

cannot be presumed. An impression appears to have been created in the mind of the advocate-on-record of the appellant that since the rules relating to an appeal as framed in the Original Side of this Court have their applicability and because of the applicability of the Letters Patent, the appeal is maintainable under Clause 15 of the Letters Patent. The applicability of the Letters Patent has been expressly excluded under Section 13 of the said Act and the proviso makes it clear that unless the order comes within the periphery thereof, no appeal would lie. The nature of the order impugned in the instant appeal is not contemplated under Order 43 of the Code of Civil Procedure and, therefore, in our opinion, the appeal is not maintainable.

The appeal is dismissed as not maintainable.

However, the dismissal of the appeal shall not prevent the appellant to pursue the remedy before the appropriate forum.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)