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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28th July, 2023

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FAO (COMM) 67/2023 & CM APPL. 12793/2023**PRIME HI-TECH ENGINEERING LIMITED**

..... Appellant

Through: Mr. Naveen Chawla &
Ms. Surabhi Rana, Advs.

versus

**SAHARA FORAGE ET BTP SARL LTD LIABILITY
COMPANY (P) LTD**

..... Respondent

Through: Mr. Anant Rao, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal, impugning an order dated 21.02.2023, passed by the learned Commercial Court in ***CS(COMM) 5164/2021***, captioned ***Sahara Forage Et Btp Sarl Ltd. Liability Company Pvt. Ltd. v. Prime Hi-Tech Engineering Ltd.***, whereby the right of the appellant (arrayed as the defendant in the suit) to lead evidence, was closed.

2. The impugned order is not an order specified in Order XLIII of the Code of Civil Procedure, 1908 ('CPC'); therefore, is not an order appealable under Section 13(1A) of the Commercial Courts Act, 2015.

3. The learned Counsel for the appellant submits that the orders enumerated under Order XLIII of the CPC, are not exhaustive and notwithstanding that, an order closing evidence is not listed under Order XLIII of the CPC, an appeal against the said order would be



maintainable. He contends that Section 13(1A) of the Commercial Courts Act, 2015, does not restrict the right to file an appeal only to such orders that are covered under Order XLIII of the CPC.

4. He referred to the decision of a coordinate Bench of this Court in ***D&H India Ltd. v. Superon Schweisstechnik India Ltd.: 2020 SCC Online DEL 477***, whereby the Court had held that appeals against orders would be maintainable, notwithstanding that they were not appealable under Order XLIII of the CPC.

5. The Court had held that Section 13(1A) of the Commercial Courts Act, 2015, was an enabling provision and would not exclude the jurisdiction of the appellate court to consider appeals against all orders passed by the Commercial Court.

6. The question whether Section 13 of the Commercial Courts Act, 2015, restricts appeals only to those order as are covered under Order XLIII of the CPC, is no longer *res integra*. The Hon'ble Supreme Court in ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.: (2018) 14 SCC 715***, has held as under:

“14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.”

7. In view of the above, we are unable to accept that the decision in ***D&H India Ltd. v. Superon Schweisstechnik India Ltd.*** (*supra*), is



good law as the said view runs contrary to the view expressed by the Hon'ble Supreme Court in ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.*** (*supra*).

8. This Court in ***HP Cotton Textile Mills Ltd. v. Oriental Insurance Company Limited***: Neutral Citation No. **2023/DHC/000632**, had rejected an appeal on the ground that the order impugned in the said matter was not one of the orders enumerated in Order XLIII of the CPC. This Court had also noted that the decision in ***D&H India Ltd. v. Superon Schweissttechnik India Ltd.*** (*supra*) was contrary to the decision of the Hon'ble Supreme Court in ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.*** (*supra*).

9. A coordinate Bench of this Court in ***Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.***: Neutral Citation No. **2021:DHC:2822-DB**, decided on 10.09.2021, had also not accepted the view as expressed in ***D&H India Ltd. v. Superon Schweissttechnik India Ltd.*** (*supra*).

10. In view of the above, the present appeal is not maintainable and is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 28, 2023
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