
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**COMMERCIAL APPEAL (STAMP) NO.18619 OF 2023
ALONG WITH
INTERIM APPLICATION NO.15602 OF 2023
IN
COMMERCIAL APPEAL (STAMP) NO.18619 OF 2023
ALONG WITH
INTERIM APPLICATION (STAMP) NO.18622 OF 2023
IN
COMMERCIAL APPEAL (STAMP) NO.18619 OF 2023**

M/s. ABC Digital Cables Private LimitedAppellant/Applicant

Versus

M/s. Shakun Gases Pvt. Ltd.Respondent

Mr. Ashok Saraogi, Advocate for Appellant/Applicant.

**Mr. Girish Kedia a/w. Mr. Krushang Kedia, Advocates for
Respondent.**

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : JANUARY 02, 2024

P. C.

1. Mentioned. With the consent of parties, taken out of turn.
2. The above Commercial Appeal inter-alia challenges the order passed by the Bombay City Civil Court, Borivali Division at Dindoshi,

Goregaon, Mumbai dated 10th April, 2023. By the impugned order, the application filed by the Appellant for rejection of the plaint under Order VII Rule 11(d) was dismissed by the Lower Court. It is to impugn this order that the present Appeal is filed.

3. The learned counsel appearing on behalf of the Respondent took a preliminary objection, namely, that the above Appeal is not maintainable under the provisions of the Commercial Courts Act, 2015. In this regard, he brought to our attention a decision of a Division Bench of this Court in the case of *Bank of India & Anr. Vs. M/s. Maruti Civil Works [Appeal From Order No.362 of 2021 in Commercial Suit No.6 of 2019, decided on 15th December, 2023]*. He submitted that in the aforesaid decision, a Division Bench of this Court has clearly held that an appeal under Section 13(1A) of the Commercial Courts Act, 2015 would lie only against the judgment and/or orders which are enumerated or enlisted under Order XLIII of the Code of Civil Procedure, 1908. An order rejecting an Application moved under Order VII Rule 10 or Order VII Rule 11(d) of the CPC is not enumerated or enlisted in Order XLIII of the CPC. Hence, such an order is not appealable.

4. Faced with this decision, Mr. Saraogi, the learned counsel appearing on behalf of the Appellant, sought leave to withdraw the

above Appeal. In these circumstances, the above Appeal is dismissed as withdrawn. However, there shall be no order as to costs.

5. We make it clear that the withdrawal of this Appeal will not disentitle the Appellant to challenge the impugned order in appropriate proceedings if he is so entitled to in law.

6. In view of the disposal of the above Commercial Appeal, nothing survives in the above Interim Applications and the same are disposed of accordingly.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]