

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL APPEAL NO.17 OF 2024
ALONG WITH
INTERIM APPLICATION NO.12985 OF 2024
IN
APPEAL FROM ORDER
IN
SUMMONS FOR JUDGMENT NO.2 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.87 OF 2022

Bhawarlal Hastimal Jagawat and Ors. .. Appellants

Vs.

Shah Coal Pvt. Ltd., Santacruz, Mumbai .. Respondent

Mr. Rajan Malkani, Advocate for the Appellants.

Mr. Tejas Gupta and Mr. Param Shah, Advocates, i/by Yasmin Bhansali & Co., for the Respondent.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 20TH SEPTEMBER 2024

PC. :

1. The challenge raised in this appeal that has been filed under Section 13 of the Commercial Courts Act, 2015 is to the order dated 19th August 2024 that has been passed by the learned Judge, City Civil Court, Borivali Division at Dindoshi, Goregaon Mumbai in Summons for Judgment No.2 of 2023 granting conditional leave to defend the summary suit preferred by the respondent.

2. The learned counsel for the respondent raises a preliminary objection to the maintainability of the commercial appeal by urging that an order granting conditional leave to defend is not appealable under the provisions of Order XLIII Rule 1 of the Code of Civil Procedure, 1908.

3. The objection as raised merits acceptance in the light of the provisions of Order XLIII Rule 1 of the Code. An appeal under Section 13(1A) of the Act of 2015 can lie only from such orders passed by the Commercial Courts that are appealable under Order XLIII Rule 1 of the Code and Section 37 of the Arbitration and Conciliation Act, 1996. Since the impugned order is not appealable under the aforesaid provisions, the commercial appeal is not maintainable.

4. With liberty to the appellants to invoke such other remedy that is available in law, the appeal is not entertained. It is disposed of. In view thereof, pending Interim Application No.12985 of 2024 is disposed of as infructuous.

5. At this stage, the learned counsel for the appellants seeks extension of time to deposit the amount in terms of the impugned order dated 19th August 2024. In the facts of the case, that time is extended by a period of two weeks from today.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]